# MISSISSIPPI CODE 1972

*Annotated*

Elections

## Title 23

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# MISSISSIPPI CODE

# 1972

## *ANNOTATED*

ADOPTED AS THE OFFICIAL CODE OF THE
STATE OF MISSISSIPPI
BY THE
1972 SESSION OF THE LEGISLATURE

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## VOLUME SIX A

## ELECTIONS

## §§ 23-1-1 to 23-17-61

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CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
TO THE END OF THE 2018 REGULAR LEGISLATIVE SESSION

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# PREFACE

The Mississippi Code of 1972, which became effective on November 1, 1973, is the culmination of nearly four years of effort on the part of the Legislature, the Attorney General's office and the publishers, which brings together provisions of general statutory law having a common subject matter into a more orderly and logical framework of code titles and chapters, and employing a modern and effective section numbering system. A major by-product of the code revision will be the state-owned magnetic computer tape containing the Mississippi Code of 1972, which will be of invaluable assistance to the Legislature and to the state.

The enabling act for the code was a recommendation of the Mississippi State Bar, which resulted in the consideration and passage of Senate Bill 1964, Chapter 465, Laws of 1970, signed into law by Governor John Bell Williams.

The Code Committee provided for in that act was comprised of A. F. Summer, Attorney General, Heber Ladner, Secretary of State, Representative Edgar J. Stephens, Jr., Chairman, House Appropriations Committee, Senator William G. Burgin, Jr., Chairman, Senate Appropriations Committee, Representative H. L. Meredith, Jr., Chairman, House Judiciary "A" and Judiciary en banc Committees, Senator E. K. Collins, Chairman, Senate Judiciary "A" and Judiciary en banc Committees, Representative Ney McKinley Gore, Jr., Chairman, House Judiciary "B" Committee, and Senator William E. Alexander, Chairman, Senate Judiciary "B" Committee. In 1972, Representative Marby Robert Penton and Senator Herman B. Decell, Chairman of House and Senate Judiciary "B" Committees, respectively, became members of the Committee, replacing Representative Gore and Senator Collins, Senator Alexander having been appointed Chairman of Senate Judiciary "A" and Judiciary en banc Committees. The Deputy Attorney General, Delos H. Burks, served the Code Committee as Secretary. Special Assistant Attorney General Fred J. Lotterhos, under the supervision of the Attorney General, was assigned the principal responsibility for the supervision of the recodification, including the consideration and treatment of some 16,000 sections of code manuscript.

Final legislative approval was given to the Mississippi Code of 1972 by passage of Senate Bill 2034, Laws of 1972, which was signed by Governor William L. Waller on April 26, 1972.

The Code Committee is of the opinion that the recodification has been thoroughly and well accomplished, and will result in a greatly improved repository of the general statutory law of the state.

A. F. Summer
Attorney General

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# PUBLISHER'S FOREWORD

This 2018 Replacement Volume 6A of the Mississippi Code of 1972 Annotated represents material appearing in the original 1973 bound volume 6, the 1990 Replacement Volume 6, the 2001 Replacement Volume 6, the 2007 Replacement Volume 6, and the 2015 Replacement Volume 6A, as well as reflecting amendments, repeals, and new Code provisions enacted by the Mississippi Legislature through the 2018 Regular Legislative Session.

This volume contains the text of Title 23, of the Mississippi Code of 1972 Annotated, as amended through the 2018 Regular Legislative Session.

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Many of these cases were decided under the former statutes in effect prior to the enactment of the Code of 1972. These earlier cases have been moved to pertinent sections of the Code where they may be useful in interpreting the current statutes. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd Series
Mississippi College Law Review
Mississippi Law Journal

Finally, published Opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

A comprehensive Index appears at the end of this volume.

Visit the LexisNexis website at http://www.lexisnexis.com for an online bookstore, technical support, customer support, and other company information.

For further information or assistance, please call us toll-free at (800) 833-9844, fax us toll-free at (800) 643-1280, e-mail us at customer.support@bender.com, or write to: Mississippi Code Editor, LexisNexis, P.O. Box 7587, Charlottesville, VA 22906-7587.

September 2018 LexisNexis

# User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of the Mississippi Code of 1972 Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

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— Analyses
— Code Status
— Comparable Legislation from other States
— Court Rules
— Cross References
— Editor's Notes
— Effective Dates
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— Tables

If you have a question not addressed by the User's Guide, or comments about your Code service, you may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Code Editor, LexisNexis, 701 E Water Street, Charlottesville, VA 22902-5389.

## ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish the Mississippi Advance Code Service pamphlets. These pamphlets contain updated statutory material and annotations to Attorney General opinions, research and practice references, and recent court decisions construing the Code. Each pamphlet is cumulative, so that each is a "one-stop" source of case notes updating those in your Code bound volumes and pocket parts.

## ADVANCE SHEETS

The Advance Sheets consist of a series of pamphlets issued in the spring. The series reproduces the acts passed by the Mississippi Legislature and approved by the Governor during the legislative session. Features include tables showing the impact of legislation on sections of the Mississippi Code of 1972 Annotated, and a cumulative index. These pamphlets enable the user to receive a preview of approved legislation prior to supplement availability, and serve as an excellent source of legislative history.

## AMENDMENT NOTES

Every time a Code provision is amended, we prepare a note describing the effect of the amendment. By reading the note, you can ascertain the impact of the change without having to check the former statute itself.

Amendment notes are retained in the Supplement until the bound volume is replaced, at which time notes from all but the last two years are deleted. Amendment notes are retained online indefinitely.

## ANALYSES

Each title, chapter, and article appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title, chapter, and article and enables you to see at a glance the content of the title, chapter, and article without resorting to a page-by-page examination in the bound volume or supplement.

## CODE STATUS

The Mississippi Code of 1972 Annotated is Mississippi's official code and is considered evidence of the statute law of the State of Mississippi (see § 1-1-8). The Code was enacted by Chapter 394 of the Laws of 1972, which was signed by the Governor on April 26, 1972.

Title 1, Chapters 1 through 5 of the Code contain statutes governing the status and construction of the Code.

## COMPARABLE LEGISLATION FROM OTHER STATES

Notes to comparable legislation from other states appear for uniform laws, interstate compacts, statutory provisions pertaining to reciprocity and cooperation with other states, and various important statutes of general interest. Other states' statutes that are similar in subject matter and scope to those of Mississippi are cited, generally, under the first section of the chapter or article to which they pertain. Occasionally, comparable legislation pertains to only one section, in which case it is cited under that section rather than at the chapter or article level.

See also *Federal Aspects*.

## COURT RULES

The Mississippi Court Rules are published separately by LexisNexis in a fully annotated softcover volume which is replaced annually and supplemented semi-annually.

The Court Rules volume contains statewide rules of procedure of the state courts, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and edited only for stylistic consistency. For further information, see the Preface to the Mississippi Court Rules volume.

## CROSS REFERENCES

Cross references refer you to notes under other Code sections, that may affect a law or place it in context. Cross references also are used under repealed provisions to refer you to an existing law on a similar subject. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

See also *Comparable Legislation from other States* and *Federal Aspects*.

## EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a law, or special circumstances surrounding passage of the law, that are not apparent from the law's text.

See also *Effective Dates*.

## EFFECTIVE DATES

Absent a specific effective date provision within an act, Mississippi laws generally take effect upon approval date, which is the date the act is signed into law by the Governor.

## FEDERAL ASPECTS

Notes to federal legislation that is similar in subject matter and scope to the laws of Mississippi are referenced throughout the Code. In addition, the Code contains the United States Code Service citation for any federal law that is referred to in a Mississippi statute by its popular name or by its session law designation.

See also *Comparable Legislation from other States*.

## HISTORY NOTES

Each section of the Code is followed by a brief note showing the acts of the Legislature on which it is based, including the act that originally enacted the section and any subsequent amendments.

The history note follows the section text, preceding any other annotations for the section. Information in the history note is listed in chronological order, first by Codes, then by Laws, with the most recent information listed last. If a section has been renumbered, the former number will appear in the history note.

The tables volume should also be consulted when researching the history of a statutory section, since it contains cross reference tables that provide a statutory citation for each section of the session laws and the date each act went into effect.

## INDEX

The Code is completely indexed in two softcover Index volumes, which are updated and replaced annually. In addition, each volume of the Code is followed by its own index. As accurate and thorough as the Index is, your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory Foreword to the Index appears in the first Index volume.

## JOINT LEGISLATIVE COMMITTEE NOTES

Joint Legislative Committee notes are included in the Code to describe codification decisions made by the Mississippi Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Examples of Committee actions that warrant the inclusion of a note are the integration of multiple amendments to a single Code section during the same legislative session, and the correction of typographical errors appearing in the Code.

## JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent sections of the statutes or Mississippi Constitution provisions, under the heading "Judicial Decisions." Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called "catchlines." The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes. Catchlines are numbered and arranged thematically, with "In general" first. Where there are two or more catchlines, an analysis, listing all the catchlines, precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note will have some relevance under current law, though of course the relevance may be diminished by later changes in the law. These case notes appear under the heading "Decisions under former law."

## OPINIONS OF THE ATTORNEY GENERAL

Opinions of the Attorney General for the State of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant Code provisions under the heading "Opinions of the Attorney General."

## ORGANIZATION AND NUMBERING SYSTEM

The Code is organized by titles, chapters, articles, subarticles, undesignated centered headings and sections. Analyses at the beginning of each title, chapter, article, and subarticle help you understand the internal arrangement of each Code unit (see *Analyses*).

Odd numbers are generally used for the numbering of titles, chapters and sections. Even numbers have been used for some chapters and sections so that a particular new chapter or section might be logically placed with other chapters and sections dealing with the same or similar subject matter. Similarly, the use of numbers with decimal points has been used for some sections in order that they may be inserted among other sections pertaining to the same subject.

The title, chapter, and section for each Code section is revealed by its section number. Thus, in the designation "§ 1-3-65," the first digit ("1") means the provision is in Title 1 ("Laws and Statutes"); the second ("3") indicates Chapter 3 ("Construction of Statutes"); and the last two digits ("65") mean the 65th section in that chapter ("Construction of terms generally").

Articles and subarticles are not reflected by section number designations.

Within sections, subsections and paragraphs usually are designated following this pattern: (1)(a)(i)1. or (1)(a)(i)A. A distinctive indention scheme is applied to suggest the relative value of each unit within this hierarchy.

## PLACEMENT OF NOTES

Where a note pertains to a single statute section, it will of course be set out following that section. In many instances, however, a note applies equally to several statute sections or to an entire chapter or article. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a chapter or article, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the chapter or article.

## REPLACEMENT VOLUMES

The Code is periodically updated and streamlined by the replacement of volumes. Although a current set of the Code contains all currently applicable statutes, we encourage you to retain replaced volumes and their supplement pockets parts for historical reference.

## RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various other treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

## STATUTE HEADINGS

Headings or "catchlines" for Code sections and subsections are generally created and maintained by the publisher. They are mere catchwords and are not to be deemed or taken as the official title of a section or as a part of the section. Your suggestions for the improvement of particular catchlines are invited.

## TABLES

The Mississippi Code of 1972 Annotated contains several tables that can assist you in your research. These are published in the Statutory Tables volume of the Code, and include the following:

- Sections of the Code of 1930 carried into the Code of 1942.
- Sections of the Code of 1942 carried into the Code of 1972.
- Allocation of Acts of Legislature, 1931 — 1972.
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- Consolidated Tables of amendments and repeals of 1942 Code sections.
- Consolidated Tables of amendments and repeals of 1972 Code sections.

# GENERAL OUTLINE OF TITLES AND CHAPTERS

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23-1-1 and 23-1-3. Repealed.
23-1-4. Repealed.
23-1-5 through 23-1-67. Repealed.

**§§ 23-1-1 and 23-1-3. Repealed.**

Repealed by Laws, 1986, ch. 495, § 331, eff from and after January 1, 1987.

§ 23-1-1. [Codes, 1892, §§ 3256, 3257; 1906, § 3698; Hemingway's 1917, § 6389; 1930, § 5865; 1942, § 3106; Laws, 1960, ch. 442]

§ 23-1-3. [Codes, 1892, §§ 3256, 3257; 1906, § 3699; Hemingway's 1917, § 6390; 1930, § 5866; 1942, § 3107; Laws, 1948, ch. 308; Laws, 1952, ch. 391; Laws, 1963, 1st Ex Sess, ch. 32, § 2; Laws, 1968, ch. 566, § 1; Laws, 1972, ch 301, § 1; Laws, 1976, ch. 412, § 1; Laws, 1979, ch. 363, § 1]

**Editor's Notes —**

Former §§ 23-1-1 through 23-1-3 provided for qualification of candidates and registration of political parties.

For present similar provisions, see § 23-15-1051 through 23-15-1055.

### § 23-1-4. Repealed.

Repealed by Laws, 1986, ch. 484, § 15, eff from and after January 1, 1987. [Laws, 1975, ch. 513]

### §§ 23-1-5 through 23-1-67. Repealed.

Repealed by Laws, 1986, ch. 495, § 331, eff from and after January 1, 1987.

§ 23-1-5. [Codes, 1942, § 3107-01; Laws, 1950, ch. 458, § 1]

§ 23-1-7. [Codes, 1942, § 3107-02; Laws, 1950, ch. 458, § 2]

§ 23-1-9. [Codes, 1942, § 3107-04; Laws, 1950, ch. 458, § 4; Laws, 1970, ch. 506, § 1]

§ 23-1-11. [Codes, 1942, § 3107-06; Laws, 1950, ch. 458, § 6]

§ 23-1-15. [Codes, 1942, § 3107-11; Laws, 1963, 1st Ex Sess ch. 32, § 1]

§ 23-1-17. [Codes, 1942, § 3166; Laws, 1935, ch. 19]

§ 23-1-19. [Codes, 1942, § 3107-13; Laws, 1963, 1st Ex Sess ch. 32, § 4; Laws, 1978, ch. 389, § 1]

§ 23-1-21 and 23-1-23. [Codes, 1942, §§ 3107-14, 3107-15; Laws, 1963, 1st Ex Sess ch. 32, §§ 5, 6]

§ 23-1-25. [Codes, 1942, § 3107.7; Laws, 1960, ch. 443]

§ 23-1-27. [Codes, 1942, § 3108.5; Laws, 1947, 1st Ex ch. 16; Laws, 1970, ch. 506, § 2]

§ 23-1-29. [Codes, 1942 § 3118.5; Laws, 1948, ch. 307, § 2; Laws, 1970, ch. 506, § 3]

§ 23-1-31. [Codes, 1942, § 3118.7; Laws, 1952, ch. 394; Laws, 1970, ch. 506, § 4]

§ 23-1-33. [Codes, 1906, § 3718; Hemingway's 1917, § 6410; 1930, § 5878; 1942, § 3120; Laws, 1936, ch. 326; Laws, 1962, ch. 566, § 1; Laws, 1970, ch. 508, § 1]

§ 23-1-35. [Codes, 1930, § 5879; 1942, § 3121; Laws, 1944, ch. 170; Laws, 1947, 1st Ex ch. 18; Laws, 1962, chs. 566, 567; Laws, 1970, ch. 506, § 5]

§ 23-1-37. [Codes, 1930, § 5880 1942, § 3122]

§ 23-1-39. [Codes, 1906, § 3704; Hemingway's 1917, § 6396; 1930, § 5881; 1942, § 3123; Laws, 1970, ch. 506, § 6; Laws, 1978, ch. 391, § 1; Laws, 1984, ch. 401, § 4]

§ 23-1-41. [Codes, 1906, § 3716; Hemingway's 1917, § 6408; 1930, § 5886; 1942, § 3128.5; Laws, 1970, ch. 506, § 7]

§§ 23-1-43 through 23-1-61. [Codes, 1942, §§ 3133-01 to 31330-10; Laws, 1970, ch. 506, §§ 8 to 17]

§ 23-1-63. [Codes, 1906, § 3726; Hemingway's 1917, § 6417; 1930, § 5905; 1942, § 3152; Laws, 1910, ch. 209; Laws, 1950, ch. 499; Laws, 1952, ch. 379; Laws, 1970, ch. 506, § 18]

§ 23-1-65. [Codes, 1930, § 5906; 1942, § 3153; Laws, 1970, ch. 506, § 19]

§ 23-1-67. [Codes, 1906, § 3718; Hemingway's 1917, § 6410; 1930, § 5877; 1942, § 3119; Laws, 1966, ch. 610, § 1; Laws, 1970, ch. 507, § 1; repealed Laws, 1970, ch. 506, § 33; amended Laws, 1972, ch. 366, § 1]

**Editor's Notes —**

Former §§ 23-1-5 through 23-1-67 provided for qualification of candidates and registration of political parties.

For present similar provisions to §§ 23-1-1 through 23-1-23, see §§ 23-15-1059 through 23-15-1069.

For present similar provisions to former § 23-1-33, see § 23-15-297.

For present similar provisions to former § 23-1-39, see § 23-15-331.

For present similar provisions to former § 23-1-63, see § 23-15-557.

For present similar provisions to former § 23-1-65, see § 23-15-311.

For present similar provisions to former § 23-1-67, see § 23-15-301.

## SELECTION OF CANDIDATES THROUGH PREFERENTIAL ELECTION AND THEIR ELECTION [REPEALED]

Sec.
23-1-81 through 23-1-103. Repealed.

### §§ 23-1-81 through 23-1-103. Repealed.

Repealed by Laws, 1986, ch. 495, § 332, eff from and after January 1, 1987.

§ 23-1-81 through § 23-1-103. [Laws, 1976, ch. 485, §§ 1-10, 13, 15]

**Editor's Notes —**

Former §§ 23-1-81 through 23-1-103 provided for selection of candidates through preferential election.

# CHAPTER 3.

# CORRUPT PRACTICES [REPEALED]

Sec.
23-3-1 through 23-3-39. Repealed.
23-3-41 through 23-3-47. Repealed.
23-3-49 through 23-3-63. Repealed.
23-3-65 through 23-3-71. Repealed.

### §§ 23-3-1 through 23-3-39. Repealed.

Repealed by Laws, 1986, ch. 495, § 333, eff from and after January 1, 1987.

§§ 23-3-1, 23-3-3. [Codes, 1942, § 3158; Laws, 1935, ch. 19; Laws, 1952, ch. 392]

§§ 23-3-5, 23-3-7. [Codes, 1942, §§ 3158.3 3158.5; Laws, 1948, chs. 310, 311]

§ 23-3-9. [Codes, 1942, § 3159; Laws, 1935, ch. 19]

§ 23-3-11. [Codes, 1942, § 3160; Laws, 1935, ch. 19; Laws, 1936, ch. 320; Laws, 1955 Ex ch. 100, § 2]

§ 23-3-13. [Codes, 1942, § 3164; Laws, 1935, ch. 19; Laws, 1960, ch. 448]

§ 23-3-15. [Codes, 1942, § 3165; Laws, 1935, ch. 19]

§ 23-3-17. [Codes, 1942, § 3166; Laws, 1935, ch. 19; Laws, 1979, ch. 487, § 4]

§§ 23-3-19 through 23-3-39. [Codes, 1942, §§ 3167-3178; Laws, 1935, ch. 19]

**Editor's Notes —**

Former §§ 23-3-1 and 23-3-39 provided for corrupt practices.

For present similar provisions of former § 23-3-13, see § 23-15-541, 23-15-581.

For present similar provisions of former § 23-3-15, see § 23-15-543.

For present similar provisions of former § 23-3-17, see § 23-15-895.

For present similar provisions to former §§ 23-3-19 through 23-3-39, see §§ 23-15-319, 23-15-335, 23-15-579, 23-15-591 through 23-15-595, 23-15-871, 23-15-873, 23-15-875 through 23-15-879, 23-15-897, 23-15-911.

### §§ 23-3-41 through 23-3-47. Repealed.

Repealed by Laws, 1986, ch. 495, §§ 333 and 334, eff from and after January 1, 1987.

§ 23-3-41. [Codes, 1942, § 3179; Laws, 1935, ch. 19; Laws, 1971, ch. 510, § 1; Laws, 1978, ch. 479, § 1]

§ 23-3-43. [Codes, 1942, § 3181; Laws, 1935, ch. 19; Laws, 1971, ch. 510, § 2; Laws, 1978, ch. 479, § 2]

§ 23-3-45. [Codes, 1942, § 3182; Laws, 1935, ch. 19; Laws, 1968, ch. 567, § 1]

§ 23-3-47. [Codes, 1942, § 3183; Laws, 1935 ch. 19]

**Editor's Notes —**

Former §§ 23-3-41 through 23-3-47 provided for corrupt practices.

For present similar provisions of former § 23-3-41, see §§ 23-15-801 through 23-15-815.

For present similar provisions of former § 23-3-43, see §§ 23-15-801 through 23-15-815, 23-15-881.

For present similar provisions of former § 23-3-45, see § 23-15-927.

For present similar provisions of former § 23-3-47, see § 23-15-929.

## §§ 23-3-49 through 23-3-63. Repealed.

Repealed by Laws, 1986, ch. 495, § 333, eff from and after January 1, 1987.

§§ 23-3-49, 23-3-51. [Codes, 1942, §§ 3184, 3185; Laws, 1935, ch. 19; Laws, 1968, ch. 567, §§ 2, 3]

§§ 23-3-53 through 23-3-57. [Codes, 1942, § 3186-3188; Laws, 1935, ch. 19]

§ 23-3-59. [Codes, 1942, § 3189; Laws, 1935, ch. 19; Laws, 1983, ch. 499, § 23]

§§ 23-3-61 and 23-3-63. [Codes, 1942, §§ 3190, 3191; Laws, 1935, ch. 19]

**Editor's Notes —**

Former §§ 23-3-49 through 23-3-63 related to corrupt practices.

For present similar provisions to former §§ 23-3-49 and 23-3-51, see §§ 23-15-931 and 23-15-933.

For present similar provisions to former §§ 23-3-53 through 23-3-57, see §§ 23-15-935 through 23-15-939.

For present similar provisions to former § 23-3-59, see § 23-15-941.

For present similar provisions to §§ 23-3-61 and 23-3-63, see §§ 23-15-963 and 23-15-973.

## §§ 23-3-65 through 23-3-71. Repealed.

Repealed by Laws, 1986, ch. 495, §§ 333 and 334, eff from and after January 1, 1987.

§ 23-3-65. [Codes, 1942, § 3192; Laws, 1935, ch. 19; Laws, 1978, ch. 479, § 3]

§ 23-3-67. [Codes, 1942, § 3193; Laws, 1935, ch. 19; Laws, 1971, ch. 510, § 3; Laws, 1978, ch. 479, § 4]

§ 23-3-69. [Codes, 1942, § 3194; Laws, 1935, ch. 19]

§ 23-3-71. [Codes, 1942, § 3195; Laws, 1935, ch. 19; Laws, 1944, ch. 210]

**Editor's Notes —**

Former §§ 23-3-65 through 23-3-71 provided for corrupt practices.

For present similar provisions to former §§ 23-3-67 through 23-3-71, see §§ 23-15-801 through 23-15-815, 23-15-305, and 23-15-319.

# CHAPTER 5.

# REGISTRATION AND ELECTIONS [REPEALED]

In General. [Repealed]. .......... 23-5-1
Mississippi Registration Law. [Repealed]. .......... 23-5-301

## IN GENERAL [REPEALED]

Sec.
23-5-1 through 23-5-15. Repealed.
23-5-17. Repealed.
23-5-19 through 23-5-63. Repealed.
23-5-65 through 23-5-69. Repealed.
23-5-71 through 23-5-131. Repealed.
23-5-133. Repealed.
23-5-134 through 23-5-139. Repealed.
23-5-140 through 23-5-142. Repealed.
23-5-143 through 23-5-247. Repealed.

### §§ 23-5-1 through 23-5-15. Repealed.

Repealed by Laws, 1986, ch. 495, § 335, eff from and after January 1, 1987.

§ 23-5-1. [Codes, 1871, §§ 340 et seq.; 1880, § 121; 1892, § 3601; 1906, § 4107; Hemingway's 1917, § 6741; 1930, § 6176; 1942, § 3204; Laws, 1964, 1st Ex Sess ch. 30; Laws, 1968 ch. 568, § 1; Laws, 1970, ch. 509, § 1]

§ 23-5-3. [Codes, 1871, §§ 340 et seq.; 1880, § 121; 1892, § 3602; 1906, § 4108; Hemingway's 1917, § 6742; 1930, § 6177; 1942, § 3205; Laws, 1968, ch. 568, § 2; Laws, 1978, ch. 431, § 1; Laws, 1979, ch. 359, § 1]

§ 23-5-7. [Codes, 1892, § 3603; 1906, § 4109; Hemingway's 1917, § 6743; 1930, § 6178; 1942, § 3206; Laws, 1900, ch. 75; Laws, 1984, ch. 460, § 1]

§§ 23-5-9 and 23-5-11. [Codes, 1880, §§ 102, 110; 1892, §§ 3604, 3605; 1906, §§ 4100, 4111; Hemingway's 1917, §§ 6744, 6745; 1930, §§ 6179, 6180; 1942, §§ 3207, 3208; Laws, 1980, ch. 425 §§ 2, 3]

§ 23-5-13. [Codes, 1880, § 103; 1892, § 3606; 1906, § 4112; Hemingway's 1917, § 6746; 1930, § 6181; 1942, § 3209; Laws, 1964, ch. 509, § 1; Laws, 1980, ch. 425, § 4]

§ 23-5-15. [Codes, 1942, § 3909.5; Laws, 1948, ch. 305; Laws, 1970, ch. 506, § 20]

**Editor's Notes —**

Former §§ 23-5-1 through 23-5-15 provided for registration and elections.

For present similar provisions to former §§ 23-5-1, 23-5-3 and 23-5-7, see §§ 23-15-211, 23-15-213 and 23-15-223, respectively.

For present similar provisions to former §§ 23-5-9 and 23-5-11, see §§ 23-15-281, and 23-15-283, respectively.

For present similar provisions to former § 23-5-13, see § 23-15-285.

### § 23-5-17. Repealed.

Repealed by Laws, 1972, ch. 490, § 604, and by Laws, 1986, ch. 495, § 335, eff from and after January 1, 1987.

[Codes, 1942, § 3209.6; Laws 1955, Ex ch. 102, § 1; Laws, 1960, ch. 449, § 1; Laws, 1962, ch. 569, § 1; Laws, 1965, Ex Sess, ch. 10, §§ 1-4]

**Editor's Notes —**

For present similar provisions, see § 23-15-39.

### §§ 23-5-19 through 23-5-63. Repealed.

Repealed by Laws, 1986, ch. 495, § 335, eff from and after January 1, 1987.

§ 23-5-19. [Codes, 1942, § 3209.7; Laws 1955, Ex ch. 102, § 2; Laws, 1960, ch. 449, § 2; Laws, 1965 Ex Sess, ch. 11, § 1]

§§ 23-5-21, 23-5-23. [Codes, 1942, §§ 3209.8, 3209.9; Laws, 1955, Ex ch. 102, §§ 3, 4]

§ 23-5-25. [Codes, 1892, § 3607; 1906, § 4113; Hemingway's 1917, § 6747; 1930, § 6182; 1942, § 3210; Laws, 1952, ch. 398, § 1; Laws, 1955, Ex Sess ch. 102, § 5; Laws, 1962, ch. 569, § 3; Laws, 1965, Ex Sess, ch. 12, § 1; Laws, 1984, ch. 457, § 4]

§ 23-5-27. [Codes, 1942, § 3210.5; Laws, 1955, Ex ch. 102, § 6]

§ 23-5-29. [Codes, 1892, § 3615; 1906, § 4122; Hemingway's 1917, § 6756; 1930, § 6183; 1942, § 3211; Laws, 1894, ch. 51; Laws, 1942, ch. 217; Laws, 1952, ch. 399; Laws, 1955, Ex ch. 103; Laws, 1966, ch. 611, § 1; Laws, 1984, ch. 457, § 5]

§ 23-5-31. [Codes, 1880, § 106; 1892, § 3611; 1906, § 4117; Hemingway's 1917, § 6751; 1930, § 6184; 1942, § 3212; Laws, 1955, Ex Sess ch. 99; Laws, 1962, ch. 569, § 2; Laws, 1965, Ex Sess, ch. 13, § 1; Laws, 1978, ch. 393, § 2; Laws, 1984, ch. 460, § 2]

§ 23-5-32. [Laws, 1978, ch. 393, § 1]

§ 23-5-33. [Codes, 1942, § 3212.5; Laws, 1962, ch. 571, §§ 1-6; Laws, 1965 Ex Sess, ch. 14, § 1]

§ 23-5-35. [Codes 1871, § 343; 1880, § 108; 1892, § 3614; 1906, § 4120; Hemingway's 1917, § 6754; 1930, § 6186; 1942, § 3214]

§ 23-5-37. [Codes, 1906, §§ 879, 4121; Hemingway's 1917, §§ 4037, 6755; 1930, §§ 4079, 6187; 1942, §§ 3215, 7920; Laws, 1898, ch. 62; Laws, 1908, ch. 109]

§ 23-5-39. [Codes, 1930, § 6188; 1942, § 3216; Laws, 1924, ch. 154; Laws, 1934, ch. 310]

§ 23-5-41. [Codes, 1930, § 6189; 1942, § 3217; Laws, 1924, ch. 154]

§§ 23-5-43 through 23-5-47. [Codes, 1880, §§ 113-115; 1892, §§ 3616-3618; 1906, §§ 4123-4125; Hemingway's 1917, §§ 6757-6759; Laws, 1930, §§ 6190-6192; 1942, § 3218-3220]

§§ 23-5-49 and 23-5-51. [Codes, 1892, §§ 3619, 3620; 1906, §§ 4126, 4127; Hemingway's 1917, §§ 6760, 6761; 1930, §§ 6193, 6194; 1942, §§ 3221, 3222]

§ 23-5-53. [Codes, 1880, § 116; 1892, § 3622; 1906, § 4129; Hemingway's 1917, § 6763; 1930, § 6195; 1942, § 3223; Laws, 1964, ch. 510, § 1; Laws, 1977, ch. 335; Laws, 1981, ch. 500, § 1; Laws, 1983, ch. 519]

§§ 23-5-55 and 23-5-57. [Codes, 1892, §§ 3624, 3625; 1906, §§ 4131, 4132; Hemingway's 1917, §§ 6765, 6766; 1930, §§ 6196,6197; 1942, § 3224, 3225]

§ 23-5-59. [Codes, 1892, § 3623; 1906, § 4130; Hemingway's 1917, § 6764; 1930, § 6198; 1942, § 3226; Laws, 1968, ch. 569, § 1; Laws, 1970, ch. 506, § 21]

§ 23-5-61. [Codes, 1942, § 3226.5; Laws, 1960, ch. 446]

§ 23-5-63. [Codes, 1892, § 3626; 1906, § 4133; Hemingway's 1917, § 6767; 1930, § 6199; 1942, § 3227; Laws, 1960, ch. 450]

**Editor's Notes —**

Former §§ 23-5-25 through 23-5-63 provided for registration and elections.

For present similar provisions to former §§ 23-5-21 through 23-5-23, see § 23-15-113.

For present similar provisions to former § 23-5-27, see § 23-15-91.

For present similar provisions to former §§ 23-5-29, see § 23-15-37.

For present similar provisions to former § 23-5-31, see § 23-15-33.

For present similar provisions to former §§ 23-5-32, see § 23-15-115.

For present similar provisions to former §§ 23-5-33, see § 23-15-41.

For present similar provisions to former §§ 23-5-35, see § 23-15-19.

For present similar provisions to former §§ 23-5-37, see § 23-15-151.

For present similar provisions to former §§ 23-5-39, see § 23-15-15.

For present similar provisions to former §§ 23-5-41, see § 23-15-21.

For present similar provisions to former §§ 23-5-43 through 23-5-47, see §§ 23-15-17.

For present similar provisions to former §§ 23-5-49 and 23-5-51, see §§ 23-15-121, 23-15-123.

For present similar provisions to former §§ 23-5-53, see § 23-15-225.

For present similar provisions to former §§ 23-5-55 through 23-5-63, see §§ 23-15-61 through 23-15-69.

### §§ 23-5-65 through 23-5-69. Repealed.

Repealed by Laws, 1986, ch. 495, § 5, eff from and after January 1, 1987.

[Codes, 1892, §§ 3626-3629; 1906, §§ 4134-4136; Hemingway's 1917, §§ 6768-6770; 1930, §§ 6200-6202; 1942, §§ 3228-3230]

**Editor's Notes —**

For present similar provisions, see §§ 23-15-71 through 23-15-75.

### §§ 23-5-71 through 23-5-131. Repealed.

Repealed by Laws, 1986, ch. 495, § 335, eff from and after January 1, 1987.

§ 23-5-71. [Codes, 1892, § 3630; 1906, § 4137; Hemingway's 1917, § 6771; 1930, § 6203; 1942, § 3231; Laws, 1968, ch. 361, § 64]

§ 23-5-73. [Codes, 1892, § 3608; 1906, § 4114; Hemingway's 1917, § 6748; 1930, § 6204; 1942, § 3232; Laws, 1962, ch. 574; Laws, 1977, 2d Ex Sess, ch. 24, § 3]

§ 23-5-74. [Laws, 1977, 2d Ex Sess, ch. 24, § 1]

§ 23-5-75. [Codes, 1892, § 3621; 1906, § 4128; Hemingway's 1917, § 6762; 1930, § 6205; 1942, § 3233; Laws, 1977 2d Ex Sess, ch. 24, § 4]

§ 23-5-76. [Laws, 1977, 2d Ex Sess, ch. 24, § 2]

§ 23-5-77. [Codes, 1892, § 3610; 1906, § 4116; Hemingway's 1917, § 6750; 1930, § 6206; 1942, § 3234]

§ 23-5-79. [Codes, 1880, § 124; 1892, § 3635; 1906, § 4142; Hemingway's 1917, § 6776; 1930, § 6211; 1942, § 3239; Laws, 1968, ch. 570, § 1; Laws, 1970, ch. 506, § 24; Laws, 1979, ch. 487, § 1; Laws, 1983, ch. 423, §§ 1, 4]

§ 23-5-80. [Laws, 1983, ch. 423, § 3; Laws, 1986, ch. 484, § 14]

§ 23-5-81. [Codes, 1942, § 3240; Laws, 1938, Ex ch. 84; Laws, 1946, ch. 220; Laws, 1958, ch. 541; Laws, 1963, 1st Ex Sess ch. 33; Laws, 1966, ch. 612, § 1; Laws, 1975, ch. 497, § 1; Laws, 1979, ch. 487, § 2; Laws, 1983, ch. 423, §§ 2, 4]

§ 23-5-82. [Laws, 1983, ch. 524, §§ 1, 2]

§ 23-5-83. [Codes, 1880, § 125; 1892, § 3636; 1906, § 4143; Hemingway's 1917, § 6777; 1930, § 6212; 1942, § 3241]

§ 23-5-85. [Codes, 1892, § 3631; 1906, § 4138; Hemingway's 1917, § 6772; 1930, § 6207; 1942, § 3235; Laws, 1952, ch. 398, § 2; Laws, 1955, Ex ch. 101; Laws, 1962, ch. 575; Laws, 1965 Ex Sess, ch. 18, § 1]

§ 23-5-89. [Codes, Hutchinson's 1848, ch. 7, art 5 (1); 1857, ch. 4, art 1; 1871, § 356; 1880, § 117; 1892, § 3632; 1906, § 4139; Hemingway's 1917, § 6773; 1930, § 6209; 1942, § 3237; Laws, 1970, ch. 506, § 22]

§ 23-5-93. [Codes, Hutchinson's 1848, ch. 7, art. 5 (1); 1857, ch. 4, art. 1; 1871, § 357; 1880, § 118; 1892, § 3633; 1906, § 4140; Hemingway's 1917, § 6774; 1930, § 6210; 1942, § 3238; Laws, 1970, ch. 506, § 23; Laws, 1978, ch. 458, § 16; Laws, 1982, Ex Sess, ch. 17, § 19]

§ 23-5-95. [Codes, 1871, § 342; 1880, § 122; 1892, § 3634; 1906, § 4141; Hemingway's 1917, § 6775; 1930, § 6213; 1942, § 3242; Laws, 1968, ch. 568, § 3]

§ 23-5-97. [Codes, 1942, § 3242.5; Laws, 1966, Ex Sess, ch. 33, §§ 1, 2; Laws, 1983, ch. 363]

§ 23-5-99. [Codes, Hutchinson's 1848, ch. 7, art 5 (4); 1857, ch. 4, art 7; 1871, § 369; 1880, § 133; 1892, § 3643; 1906, § 4150; Hemingway's 1917, § 6784; 1930, § 6214; 1942, § 3243; Laws, 1977 2d Ex Sess, ch. 24, § 5; Laws, 1980, ch. 486, § 1]

§ 23-5-101. [Codes, Hutchinson's 1848, ch. 7, art. 5 (14); 1857, ch. 4, art. 9; 1880, § 134; 1892, § 3644; 1906, § 4151; Hemingway's 1917, § 6785; 1930, § 6215; 1942, § 3244]

§ 23-5-103. [Codes, Hutchinson's 1848, ch. 7, art 5 (4); 1857, ch. 4, art 7; 1871, § 369; 1880, § 135; 1892, § 3645; 1906, § 4152; Hemingway's 1917, § 6786; 1930, § 6216; 1942, § 3245; Laws, 1980, ch. 486, § 2]

§ 23-5-105. [Codes, Hutchinson's 1848, ch. 7, art 5 (13); 1857, ch. 4, art 6; 1871, § 365; 1880, § 128; 1892, § 3638; 1906, § 4145; Hemingway's 1917, § 6779; 1930, § 6217; 1942, § 3246]

§ 23-5-107. [Codes, 1857, ch. 4, art 4; 1871, § 366; 1880, § 129; 1892, § 3639; 1906, § 4146; Hemingway's 1917, § 6780; 1930, § 6218; 1942, § 3247]

§ 23-5-109. [Codes, 1880, § 130; 1892, § 3640; 1906, § 4147; Hemingway's 1917, § 6781; 1930, § 6219; 1942, § 3248]

§ 23-5-111. [Codes, Hutchinson's 1848, ch. 7, art 5 (15); 1857, ch 4, art 10;

1871, § 364; 1880, § 126; 1892, § 3637; 1906, § 4144; Hemingway's 1917, § 6778; 1930, § 6220; 1942, § 3249]

§ 23-5-113. [Codes, 1880, § 145; 1892, § 3676; 1906, § 4183; Hemingway's 1917, § 6817; 1930, § 6221; 1942, § 3250]

§ 23-5-115. [Codes, 1892, § 3646; 1906, § 4153; Hemingway's 1917, § 6787; 1930, § 6222; 1942, § 3251]

§ 23-5-117. [Codes, 1892, § 3647; 1906, § 4154; Hemingway's 1917, § 6788; 1930, § 6223; 1942, § 3252; Laws, 1978, ch. 390, § 1]

§ 23-5-119. [Codes, 1892, § 3651; 1906, § 4158; Hemingway's 1917, § 6792; 1930, § 6224; 1942, § 3253; Laws, 1968 ch. 571, § 1]

§§ 23-5-121 through 23-5-125. [Codes, 1892, §§ 3659, 3650, 3657; 1906, §§ 4166, 4157, 4164; Hemingway's 1917, §§ 6800, 6791, 6798; 1930, §§ 6225-6227; 1942, §§ 3254, 3256]

§ 23-5-127. [Codes, 1892, § 3660; 1906, § 4167; Hemingway's 1917, § 6801; 1930, § 6228; 1942, § 3257; Laws, 1968, ch. 571, § 2]

§§ 23-5-129 and 23-5-131. [Codes, 1892, §§ 3658, 3663; 1906, §§ 4165, 4170; Hemingway's 1917, §§ 6799, 6804; 1930, §§ 6229, 6230; 1942, §§ 3258, 3259]

**Editor's Notes —**

Former §§ 23-5-71 through 23-5-119 provided for registration and elections.

For present similar provisions to former § 23-5-71, see § 23-15-77.

For present similar provisions to former § 23-5-73, see § 23-15-125.

For present similar provisions to former § 23-5-74, see § 23-15-129.

For present similar provisions to former §§ 23-5-76 and 23-5-77, see § 23-15-135.

For present similar provisions to former § 23-5-79, see § 23-15-153.

For present similar provisions to former § 23-5-83, see § 23-15-161.

For present similar provisions to former § 23-5-85, see § 23-15-11.

For present similar provisions to former § 23-5-89, see § 23-15-195.

For present similar provisions to former §§ 23-5-95 through 23-5-97, see §§ 23-15-217 through 23-15-219.

For present similar provisions to former §§ 23-5-99 through 23-5-113, see §§ 23-15-231 through 23-15-249.

For present similar provisions to former §§ 23-5-115 through 23-5-117, see §§ 23-15-253 through 23-15-255.

For present similar provisions to former § 23-5-119, see § 23-15-351.

For present similar provisions to former §§ 23-5-121 through 23-5-125, see §§ 23-15-353 through 23-15-357.

For present similar provisions to former § 23-5-127, see § 23-15-251.

### § 23-5-133. Repealed.

Repealed by Laws, 1978, ch. 429, § 3, eff July 1, 1978.

[Codes, 1892, § 3652; 1906, § 4159; Hemingway's 1917, § 6793; 1930, § 6231; 1942, § 3260; Laws, 1944, ch. 168; Laws, 1947, 1st Ex ch. 11; Laws, 1950, ch. 458, § 7; Laws, 1955, Ex ch. 105; Laws, 1956, ch. 405, § 2; Laws, 1966, ch. 613, § 1; Laws, 1970, ch. 508, § 2]

### §§ 23-5-134 through 23-5-139. Repealed.

Repealed by Laws, 1986, ch. 495, § 335, 336, 337, eff from and after January 1, 1987.

§ 23-5-134. [Laws, 1978, ch. 429, § 1; Laws, 1982, ch. 477, § 4]

§ 23-5-135. [Codes, 1892, § 3655; 1906, § 4162; Hemingway's 1917, § 6796; 1930, § 6232; 1942, § 3261; Laws, 1944, ch. 169; Laws, 1947, 1st Ex ch. 12; Laws, 1970, ch. 506, § 25]

§ 23-5-136. [Laws, 1984, ch. 439, § 1]

§ 23-5-137. [Codes, 1892, § 3653; 1906, § 4160; Hemingway's 1917, § 6794; 1930, § 6233; 1942, § 3262; Laws, 1984, ch. 439, § 2]

§ 23-5-139. [Codes, 1892, § 3656; 1906, § 4163; Hemingway's 1917, § 6797; 1930, § 6234; 1942, § 3263; Laws, 1970, ch. 506, § 26; Laws, 1978, ch. 391, § 2; Laws, 1984, ch. 401, § 5]

**Editor's Notes —**

Former §§ 23-5-134 through 23-5-139 provided for registration and elections.

For present similar provisions, see §§ 23-15-359 through 23-15-363, 23-15-317, 23-15-365, and 23-15-367, respectively.

## §§ 23-5-140 through 23-5-142. Repealed.

Repealed by Laws, 1986, ch. 501, § 4, eff from and after January 1, 1987.

§ 23-5-140. [Laws, 1986, ch. 501, § 1]

§ 23-5-141. [Codes, 1892, § 3654; 1906, § 4161; Hemingway's 1917, § 6795; 1930, § 6235; 1942, § 3264]

§ 23-5-142. [Laws, 1979, ch. 502, § 1]

**Editor's Notes —**

For present similar provisions of former § 23-5-141, see § 23-15-369.

## §§ 23-5-143 through 23-5-247. Repealed.

Repealed by Laws, 1986, ch. 495, § 335, eff from and after January 1, 1987.

§§ 23-5-143 through 23-5-247. [Codes, 1892, §§ 3658, 3663; 1906, §§ 4165, 4170; Hemingway's 1917, §§ 6799, 6804; 1930, §§ 6229, 6230; 1942, §§ 3258, 3259]

§ 23-5-147. [Codes, Hutchinson's 1848, ch. 7, art 5 (6); 1857, ch. 4, art 12; 1871, §§ 370, 371; 1880, § 136; 1892, § 3648; 1906, § 4155; Hemingway's 1917, § 6789; 1930, § 6238; 1942, § 3267; Laws, 1916, ch. 230; Laws, 1960, ch. 451; Laws, 1964, ch. 511, § 1]

§ 23-5-149. [Codes, 1892, § 3609; 1906, § 4115; Hemingway's 1917, § 6749; 1930, § 6239; 1942, § 3268]

§ 23-5-151. [Codes, 1892, § 3664; 1906, § 4171; Hemingway's 1917, § 6805; 1930, § 6240; 1942, § 3269; Laws, 1948, ch. 306]

§§ 23-5-153 and 23-5-155. [Codes, 1892, §§ 3649, 3665; 1906, §§ 4156, 4172; Hemingway's 1917, §§ 6790, 6806; 1930, §§ 6241, 6242; 1942, §§ 3270, 3271]

§ 23-5-157. [Codes, 1892, § 3666; 1906, § 4173; Hemingway's 1917, § 6807; 1930, § 6243; 1942, § 3272; Laws, 1928, ch. 196]

§§ 23-5-159 and 23-5-161. [Codes, 1892, §§ 3668, 3669; 1906, §§ 4175, 4176; Hemingway's 1917, §§ 6809, 6810; 1930, §§ 6245, 6246; 1942, §§ 3274, 3275]

§ 23-5-163. [Codes, 1871, § 367; 1880, § 143; 1892, § 3674; 1906, § 4181; Hemingway's 1917, § 6815; 1930, § 6247; 1942, § 3276]

§ 23-5-165. [Codes, 1857, ch. 4, art 18; 1871, § 368; 1880, § 144; 1892, § 3675; 1906, § 4182; Hemingway's 1917, § 6816; 1930, § 6248; 1942, § 3277]

§ 23-5-167. [Codes, 1871, § 377; 1880, § 139; 1892, § 3670; 1906, § 4177; Hemingway's 1917, § 6811; 1930, § 6249; 1942, § 3278]

§ 23-5-169. [Codes, Hutchinson's 1848, ch. 7, art 5 (9); 1857, ch. 4, art 13; 1871, § 377; 1880, § 138; 1892, § 3671; 1906, § 4178; Hemingway's 1917, § 6812; 1930, § 6250; 1942, § 3279; Laws, 1970, ch. 506, § 27]

§ 23-5-171. [Codes, Hutchinson's 1848, ch. 7, art 5 (8); 1857, ch. 4, art 14; 1871, § 378; 1880, § 140; 1892, § 3672; 1906, § 4179; Hemingway's 1917, § 6813; 1930, § 6251; 1942, § 3280; Laws, 1970, ch. 506, § 28; Laws, 1978, ch. 458, § 17; Laws, 1982, Ex Sess, ch. 17, § 20]

§ 23-5-173. [Codes, 1857, ch. 4, art 15; 1871, § 378; 1880, § 141; 1892, § 3673; 1906, § 4180; Hemingway's 1917, § 6814; 1930, § 6252; 1942, § 3281; Laws, 1970, ch. 506, § 29]

§ 23-5-175. [Codes, Hutchinson's 1848, ch. 7, art 5 (16); 1857, ch. 4, art 5; 1880, § 131; 1892, § 3641; 1906, § 4148; Hemingway's 1917, § 6782; 1930, § 6253; 1942, § 3282]

§ 23-5-177. [Codes, 1880, § 132; 1892, § 3642; 1906, § 4149; Hemingway's 1917, § 6783; 1930, § 6254; 1942, § 3283]

§ 23-5-179. [Codes, 1892, § 3704; 1906, § 4211; Hemingway's 1917, § 6847; 1930, § 6255; 1942, § 3284; Laws, 1976, ch. 350, §§ 1, 2; Laws, 1985, ch. 397, § 1]

§ 23-5-181. [Codes, 1892, § 3705; 1906, § 4212; Hemingway's 1917, § 6348; 1930, § 6256; 1942, § 3285]

§ 23-5-183. [Codes, 1892, § 3706; 1906, § 4213; Hemingway's 1917, § 6849; 1930, § 6257; 1942, § 3286; Laws, 1932, ch. 298; Laws, 1938, ch. 306; Laws, 1950, ch. 281; Laws, 1960, ch. 452, § 1; Laws, 1966 ch. 614, § 1; Laws, 1970, ch. 511, § 1; Laws, 1973, ch. 401 § 1; Laws, 1975, ch. 497, § 2; Laws, 1979, ch. 487, § 3; Laws, 1983, ch. 510]

§ 23-5-184. [Laws, 1973, ch. 346 § 1]

§ 23-5-185. [Codes, 1942, § 3286.5; Laws, 1954, ch. 357, §§ 1, 2; Laws, 1960, ch. 452, § 2; Laws, 1970, ch. 506, § 30]

§ 23-5-187. [Codes, Hutchinson's 1848, ch. 7, art 7 (1); 1857, ch. 4, art 23; 1871, § 391; 1880, § 150; 1892, § 3679; 1906, § 4186; Hemingway's 1917, § 6820; 1930, § 6258; 1942 § 3287]

§ 23-5-189. [Codes, 1880, § 151; 1892, § 3680; 1906, § 4187; Hemingway's 1917, § 6821; 1930, § 6259; 1942, § 3288]

§ 23-5-191. [Codes, 1857, ch. 4, art 21; 1871, § 389; 1880, § 148; 1892, § 3677; 1906, § 4184; Hemingway's 1917, § 6818; 1930, § 6260; 1942, § 3289]

§ 23-5-193. [Codes, Hutchinson's 1848, ch. 7, art 5 (20); 1857, ch. 4, art 20; 1871, § 388; 1880, § 147; 1892, § 3678; 1906, § 4185; Hemingway's 1917, § 6819; 1930, § 6261; 1942, § 3290]

§ 23-5-195. [Codes, Hutchinson's 1848, ch. 7, art 6 (2); 1857, ch. 4, art 26; 1871, § 394; 1880, § 154; 1892, § 3681; 1906, § 4188; Hemingway's 1917, § 6822; 1930, § 6262; 1942, § 3291]

§ 23-5-196. [Laws, 1979, ch. 343, §§ 1, 3; Laws, 1981, ch. 303, § 1]

§ 23-5-197. [Codes, 1906, § 4189; Hemingway's 1917, § 6823; 1930, § 6263; 1942, § 3292; Laws, 1900, ch. 79; Laws, 1948, ch. 259; Laws, 1958, ch. 542; Laws, 1966, ch. 615, § 1; Laws, 1984, ch. 465, § 2]

§ 23-5-199. [Codes, 1880, § 155; 1892, § 3682; 1906, § 4191; Hemingway's 1917, § 6825; 1930, § 6265; 1942, § 3294; Laws, 1966, ch. 615, § 3]

§ 23-5-201. [Codes, 1857, ch 4, art 29; 1871, § 395; 1880, § 157; 1892, § 3684; 1906, § 4192; Hemingway's 1917, § 6826; 1930, § 6266; 1942, § 3295; Laws, 1956, ch. 405, § 1]

§ 23-5-203. [Codes, 1880, § 158; 1892, § 3685; 1906, § 4193; Hemingway's 1917, § 6827; 1930, § 6267; 1942, § 3296; Laws, 1954, ch. 356; Laws, 1984, ch. 465, § 1]

§ 23-5-205. [Codes, 1942, § 3296.5; Laws, 1966 Ex Sess, ch. 32, §§ 1, 2]

§ 23-5-207. [Codes, Hutchinson's 1848, ch. 7, art 4 (1); 1857, ch. 4, art 39; 1871, § 362; 1880, § 165; 1892, § 3699; 1906, § 4206; Hemingway's 1917, § 6842; 1930, § 6268; 1942, § 3297]

§ 23-5-209. [Codes, Hutchinson's 1848, ch. 7, art 4 (2); 1857, ch. 4, art 40; 1871, § 380; 1880, § 166; 1892, § 3700; 1906, § 4207; Hemingway's 1917, § 6843; 1930, § 6269; 1942, § 3298; Laws, 1944, Ex ch. 2]

§ 23-5-210. [Laws, 1982, ch. 478, § 1]

§ 23-5-211. [Codes, Hutchinson's 1848, ch. 7, art 4 (6); 1857, ch. 4, art 41; 1871, § 381; 1880, § 167; 1892, § 3701; 1906, § 4208; Hemingway's 1917, § 6844; 1930, § 6270; 1942, § 3299]

§ 23-5-213. [Codes, Hutchinson's 1848, ch. 7, art 4 (4); 1857, ch. 4, art 42; 1871, § 382; 1880, § 168; 1892, § 3702; 1906, § 4209; Hemingway's 1917, § 6845; 1930, § 6271; 1942, § 3300; Laws, 1902, ch. 105; Laws, 1944, Ex ch. 4]

§ 23-5-215. [Codes, Hutchinson's 1848, ch. 7, art 4 (5); 1857, ch. 4, art 43; 1880, § 169; 1892, § 3703; 1906, § 4210; Hemingway's 1917, § 6846; 1930, § 6272; 1942, § 3301]

§ 23-5-217. [Codes, Hutchinson's 1848, ch. 7, art 5 (10); 1857, ch. 4, art 32; 1871, § 360; 1880, § 160; 1892, § 3687; 1906, § 4194; Hemingway's 1917, § 6828; 1930, § 6273; 1942, § 3302]

§ 23-5-219. [Codes, 1857, ch. 4, art 33; 1880, § 161; 1892, § 3688; 1906, § 4195; Hemingway's 1917, § 6829; 1930, § 6274; 1942, § 3303]

§ 23-5-221. [Codes, 1857, ch. 4, art 35; 1871, § 361; 1880, § 162; 1892, § 3689; 1906, § 4196; Hemingway's 1917, § 6830; 1930, § 6275; 1942, § 3304; Laws, 1968 ch. 572, §§ 1, 2]

§ 23-5-223. [Codes, 1892, § 3691; 1906, § 4198; Hemingway's 1917, § 6832; 1930, § 6276; 1942, § 3305; Laws, 1902, ch. 61; Laws, 1932, ch. 136; Laws, 1952, ch. 401, § 1; Laws, 1956, ch. 407; Laws, 1962, ch. 576, § 1; Laws, 1966, ch. 616, § 1; Laws, 1972, ch. 305, § 1; Laws, 1981, 1st Ex Sess, ch. 8, § 1]

§ 23-5-225. [Codes, Hutchinson's 1848, ch. 7, art 11; 1857, ch. 4, art 36; 1880, § 163; 1892, § 3690; 1906, § 4197; Hemingway's 1917, § 6831; 1930, § 6277; 1942, § 3306]

§ 23-5-227. [Codes, Hemingway's 1917, § 6834; 1930, § 6278; 1942, § 3307; Laws, 1914, ch. 148]

§§ 23-5-229 and 23-5-231. [Codes, Hemingway's 1917, §§ 6835, 6836; 1930, §§ 6279, 6280; 1942, §§ 3308, 3309; Laws, 1914, ch. 148]

§ 23-5-233. [Codes, Hemingway's 1917, § 6840; 1930, § 6283; 1942, § 3312; Laws, 1914, ch. 150; Laws, 1973, ch. 362, § 1; Laws, 1981, ch. 314, § 1; Laws, 1984, ch. 465, § 3]

§§ 23-5-235 and 23-5-237. [Codes, Hemingway's 1917, §§ 6837, 6838, 6850; 1930, §§ 6281, 6284, 6292; 1942, §§ 3311-3313; Laws, 1914, ch. 150]

§ 23-5-239. [Codes, Hemingway's 1917, § 6850; 1930, § 6284; 1942, § 3313; Laws, 1916, ch. 161]

§ 23-5-241. [Codes, 1942, § 3313.5; Laws, 1952, ch. 244, §§ 1-3; Laws, 1964, ch. 361; Laws, 1970, ch. 506, § 31]

§ 23-5-243. [Hemingway's 1917, § 6851; 1930, § 6285; 1942, § 3314; Laws, 1916, ch. 161]

§ 23-5-245. [Codes, Hemingway's 1917, § 6852; 1930, § 6286; 1942, § 3315; Laws, 1916, ch. 161; Laws, 1970, ch. 506, § 32]

§ 23-5-247. [Codes, Hemingway's 1917, § 6855; 1930, § 6287; 1942, §§ 3190, 3316; Laws, 1916, ch. 161; Laws, 1935, ch. 19]

**Editor's Notes —**

For present similar provisions to former § 23-5-141, see § 23-15-369.

For present similar provisions to former §§ 23-5-143 and 23-5-145, see §§ 23-15-371, and 23-15-373.

For present similar provisions to former §§ 23-5-147 through 23-5-151, see §§ 23-15-581, 23-15-591, 23-15-545, and 23-15-551, respectively.

For present similar provisions to former §§ 23-5-153 and 23-5-155, see §§ 23-15-547, and 23-15-553, respectively.

For present similar provisions to former § 23-5-157, see § 23-15-549.

For present similar provisions to former §§ 23-5-159 and 23-5-161, see §§ 23-15-269.

For present similar provisions to former § 23-5-165, see § 23-15-901.

For present similar provisions to former § 23-5-167, see § 23-15-591.

For present similar provisions to former §§ 23-5-169 through 23-5-175, see §§ 23-15-601 through 23-15-609.

For present similar provisions to former §§ 23-5-179 and 23-5-181, see §§ 23-15-259 and 23-15-261.

For present similar provisions to former §§ 23-5-183 and 23-5-184, see §§ 23-15-227 and 23-15-229.

For present similar provisions to former §§ 23-5-187 through 23-5-193, see §§ 23-15-951 through 23-15-957.

For present similar provisions to former §§ 23-5-195 through 23-5-199, see §§ 23-15-831 through 23-15-839.

For present similar provisions to former §§ 23-5-201, 23-5-203, 23-5-207 and 23-5-209, see §§ 23-15-851, 23-15-833, 23-15-781 and 23-15-783, respectively.

For present similar provisions to former §§ 23-5-210 through 23-5-215, see §§ 23-15-785 through 23-15-789, 23-15-791 and 23-15-995.

For present similar provisions to former §§ 23-5-217, 23-5-219, 23-5-221 and 23-5-223, see §§ 23-15-1033 through 23-15-1037 and 23-15-853.

For present similar provisions to former §§ 23-5-225 through 23-5-231, see §§ 23-15-1039, 23-15-1041, and 23-15-855, respectively.

For present similar provisions to former § 23-5-233, see § 23-15-843.

For present similar provisions to former §§ 23-5-235 and 23-5-237, see §§ 23-15-1011, and 23-15-1015, respectively.

For present similar provisions to former §§ 23-5-241, 23-5-245 and 23-5-247, see §§ 23-15-993, 23-15-607, and 23-15-849, respectively.

For present similar provisions of former §§ 23-5-241, 23-5-245 and 23-5-247, see §§ 23-15-993, 23-15-607, and 23-15-849, respectively.

# MISSISSIPPI REGISTRATION LAW [REPEALED]

Sec.
23-5-301 through 23-5-313. Repealed.

## §§ 23-5-301 through 23-5-313. Repealed.

Repealed by Laws, 1986, ch. 495, § 337, eff from and after January 1, 1987.

§ 23-5-301. [Codes, 1942, § 3203-501; Laws, 1972, ch. 490, § 501]

§ 23-5-303. [Codes, 1942, § 3203-502; Laws, 1972, ch. 490, § 502; Laws, 1975, ch. 502, § 1; Laws, 1984, ch. 457, § 1]

§ 23-5-305. [Codes, 1942, § 3203-503; Laws, 1972, ch. 490, § 503; Laws, 1975, ch. 502, § 2]

§ 23-5-307. [Codes, 1942, § 3203-504; Laws, 1972, ch. 490, § 504]

§ 23-5-309. [Codes, 1942, § 3203-505; Laws, 1972, ch. 490, § 505]

§ 23-5-311. [Codes, 1942, § 3203-601; Laws, 1972, ch. 490, § 601]

§ 23-5-312. [Laws, 1975, ch. 503, § 3]

§ 23-5-313. [Codes, 1942, § 3203-603; Laws, 1972, ch. 490, § 603]

**Editor's Notes —**

Former §§ 23-5-301 through 23-5-313 provided for registration and elections.

For present similar provisions of former §§ 23-5-303 through 23-5-313, see §§ 23-15-31, 23-15-39, 23-15-43, 23-15-45, 23-15-79, 23-15-93 and 23-15-95, respectively.

# CHAPTER 7.

# VOTING MACHINES AND ELECTRONIC VOTING SYSTEM [REPEALED]

Article 1. Voting Machines [Repealed]. 23-7-1
Article 3. Electronic Voting Systems. [Repealed]. 23-7-301
Article 5. Optical Mark Reading Tabulating Equipment. [Repealed]. 23-7-501

## ARTICLE 1.

## VOTING MACHINES [REPEALED].

Sec.
23-7-1 and 23-7-3. Repealed.
23-7-5 through 23-7-51. Repealed.

### §§ 23-7-1 and 23-7-3. Repealed.

Repealed by Laws, 1986, ch. 486, § 338, eff from and after January 1, 1987.

[Codes, 1942, §§ 3316-01, 3316-24; Laws, 1954, ch. 360, §§ 1, 24]

**Editor's Notes —**
For present similar provisions, see § 23-15-223.

### §§ 23-7-5 through 23-7-51. Repealed.

Repealed by Laws, 1986, ch. 495, § 338, eff from and after January 1, 1987.

§ 23-7-5. [Codes, 1942, § 3316-02; Laws, 1954, ch. 360, § 2; Laws, 1978, ch. 387, § 1]

§§ 23-7-7 through 23-7-51. [Codes, 1942, §§ 3316-03 to 3316-23; Laws, 1954, ch. 360, §§ 3-26]

## ARTICLE 3.

## ELECTRONIC VOTING SYSTEMS [REPEALED].

Sec.
23-7-301 through 23-7-325. Repealed.

### §§ 23-7-301 through 23-7-325. Repealed.

Repealed by Laws, 1986, ch. 495, § 339, eff from and after January 1, 1987.

§§ 23-7-301 through 23-7-309. [Codes, 1942, §§ 3316-31 to 3316-35; Laws, 1966, ch. 609, §§ 1-51]

§ 23-7-311. [Codes, 1942, § 3316-36; Laws, 1966, ch. 609, § 6; Laws, 1972, ch. 512, § 2]

§§ 23-7-313 and 23-7-315. [Codes, 1942, §§ 3316-37, 3316-38; Laws, 1966, ch. 609, §§ 7, 8]

§ 23-7-317. [Codes, 1942, § 3316-39; Laws, 1966, ch. 609, § 9; Laws, 1972, ch. 512, § 1]

§§ 23-7-319 through 23-7-325. [Codes, 1942, § 3316-40 to 3316-43; Laws, 1966, ch. 609, §§ 10-13]

**Editor's Notes —**

For present similar provisions, see §§ 23-15-461 through 23-15-485, respectively.

## ARTICLE 5.

## OPTICAL MARK READING TABULATING EQUIPMENT [REPEALED].

Sec.
23-7-501 through 23-7-525. Repealed.

### §§ 23-7-501 through 23-7-525. Repealed.

Repealed by Laws, 1986, ch. 495, § 340, eff from and after January 1, 1987.

[Laws, 1984, ch. 509, §§ 1-13]

**Editor's Notes —**

For present similar provisions, see § 23-15-501 through 23-15-525.

# CHAPTER 9.

# ABSENTEE BALLOT [REPEALED]

Article 1. Absentee Voting by Persons in Armed Forces. [Repealed]. .......... 23-9-1
Article 3. Absentee Voting by Persons in Transportation Service. [Repealed]. .. 23-9-301
Article 5. Absentee Balloting Procedures Law. [Repealed]. .................... 23-9-401
Article 7. Armed Services Absentee Voting Law. [Repealed]. .................. 23-9-501
Article 9. Absentee Voter Law. [Repealed]. ...................................... 23-9-601
Article 11. General Provisions. [Repealed]. ...................................... 23-9-701

## ARTICLE 1.

## ABSENTEE VOTING BY PERSONS IN ARMED FORCES [REPEALED].

Sec.
23-9-1 through 23-9-31. Repealed.

### §§ 23-9-1 through 23-9-31. Repealed.

Repealed by Laws, 1972, ch. 490, § 604, eff May 15, 1972.

§ 23-9-1. [Codes, 1942, § 3196-01; Laws, 1942, ch. 202; Laws, 1944, ch. 171, § 5; ch. 359, § 1]

§ 23-9-3. [Codes, 1942, § 3196-02; Laws, 1954, ch. 359, § 2]

§ 23-9-5. [Codes, 1942, § 3196-03; Laws, 1954, ch. 359, § 3]

§ 23-9-7. [Codes, 1942, § 3196-04; Laws, 1942, ch. 202; Laws, 1944, ch. 171, § 2; Laws, 1952, ch. 396, § 1; Laws, 1954, ch. 359, § 4]

§ 23-9-9. [Codes, 1942, § 3196-05; Laws, 1942, ch. 202; Laws, 1944, ch. 171; Laws, 1954, ch. 359, § 5]

§§ 23-9-11 and 23-9-13. [Codes, 1942, §§ 3196-06, 3196-07; Laws, 1942, ch. 202; Laws, 1944, ch. 171, §§ 4, 5; Laws, 1952, ch. 396, §§ 2, 3]

§§ 23-9-15 and 23-9-17. [Codes, 1942, §§ 3196-08, 3196-09; Laws, 1942, ch. 202; Laws, 1944, ch. 171; Laws, 1954, ch. 359, §§ 8, 9]

§ 23-9-19. [Codes, 1942, § 3196-10; Laws, 1942, ch. 202; Laws, 1954, ch. 359, § 10]

§§ 23-9-21 through 23-9-25. [Codes, 1942, §§ 3196-11 to 3196-13; Laws, 1942, ch. 202; Laws, 1944, ch. 171; Laws, 1954, ch. 359, §§ 11-13]

§ 23-9-27. [Codes, 1942, § 3196-14; Laws, 1954, ch. 359, § 14]

§§ 23-9-29 and 23-9-31. [Codes, 1942, §§ 3196-15, 3196-16; Laws, 1944, ch. 171, §§ 7, 9; Laws, 1954, ch. 359, §§ 15, 16]

**Editor's Notes —**

Former §§ 23-9-1 through 23-9-9 provided for absentee voting by persons in armed forces.

For present similar provisions to former § 23-9-5, see § 23-15-679.

For present similar provisions to former § 23-9-19, see § 23-15-635.

# ARTICLE 3.

# ABSENTEE VOTING BY PERSONS IN TRANSPORTATION SERVICE [REPEALED].

Sec.
23-9-301 through 23-9-315. Repealed.

### §§ 23-9-301 through 23-9-315. Repealed.

Repealed by Laws, 1972, ch. 490, § 604, eff May 15, 1972.

§§ 23-9-301 through 23-9-315. [Codes, 1942, §§ 3202-11 to 3203-18; Laws, 1958, ch. 540, §§ 1-8]

# ARTICLE 5.

# ABSENTEE BALLOTING PROCEDURES LAW [REPEALED].

Sec.
23-9-401 through 23-9-431. Repealed.

### §§ 23-9-401 through 23-9-431. Repealed.

Repealed by Laws, 1986, ch. 495, § 341, eff from and after January 1, 1987.

§§ 23-9-401 through 23-9-425. [Codes, 1942, §§ 3203-401 to 3203-404; Laws, 1972, ch. 490, §§ 401 to 404]

§ 23-9-427. [Codes, 1942, § 3203-405; Laws, 1972, ch. 490, § 405; Laws, 1984, ch. 401, § 3]

§§ 23-9-429 and 23-9-431. [Codes, 1942, §§ 3203-406, 3203-407; Laws, 1972, ch. 490, §§ 406, 407]

**Editor's Notes —**

For present similar provisions, see §§ 23-15-621 through 23-15-653.

# ARTICLE 7.

# ARMED SERVICES ABSENTEE VOTING LAW [REPEALED].

Sec.
23-9-501 through 23-9-527. Repealed.

### §§ 23-9-501 through 23-9-527. Repealed.

Repealed by Laws, 1986, ch. 495, § 342, eff from and after January 1, 1987.

§§ 23-9-501 through 23-9-511. [Codes, 1942, §§ 3203-201 to 3203-204; Laws, 1972, ch. 490, §§ 201-204]

§§ 23-9-513 and 23-9-515. [Codes, 1942, §§ 3203-204, 3203-205; Laws, 1972, ch. 490, §§ 204, 205; Laws, 1984, ch. 401, §§ 1, 2]

§§ 23-9-517 through 23-9-527. [Codes, 1942, §§ 3203-206 to 3203-211; Laws, 1972, ch. 490, §§ 206-211]

**Editor's Notes —**

For present similar provisions, see §§ 23-15-671 through 23-15-697.

# ARTICLE 9.

# ABSENTEE VOTER LAW [REPEALED].

Sec.
23-9-601 through 23-9-607. Repealed.
23-9-609. Repealed.
23-9-611 and 23-9-613. Repealed.

### §§ 23-9-601 through 23-9-607. Repealed.

Repealed by Laws, 1986, ch. 495, § 343, eff from and after January 1, 1987.

§§ 23-9-601 through 23-9-607. [Codes, 1942, §§ 3203-301 to 3203-304; Laws, 1972, ch. 490, §§ 301-304]

**Editor's Notes —**

For present similar provisions, see §§ 23-15-711 through 23-15-717.

### § 23-9-609. Repealed.

Repealed by Laws, 1978, ch. 432, § 1, eff July 1, 1978.

§ 23-9-609. [Codes, 1942, § 3202-305; Laws, 1972, ch. 490, § 305]

### §§ 23-9-611 and 23-9-613. Repealed.

Repealed by Laws, 1986, ch. 495, § 343, eff from and after January 1, 1987.

§§ 23-9-611 through 23-9-613. [Codes, 1942, §§ 3203-306, 3203-307; Laws, 1972, ch. 490, §§ 306, 307]

**Editor's Notes —**

For present similar provisions, see §§ 23-15-719 through 23-15-721.

# ARTICLE 11.

# GENERAL PROVISIONS [REPEALED].

Sec.
23-9-701 through 23-9-707. Repealed.

### §§ 23-9-701 through 23-9-707. Repealed.

Repealed by Laws, 1986, ch. 495, § 344, eff from and after January 1, 1987.

§§ 23-9-701 through 23-9-707. [Codes, 1942, §§ 3203-601 to 3203-603, 3203-606; Laws, 1972, ch. 490, §§ 601 to 603, 606]

**Editor's Notes —**

For present similar provisions, see §§ 23-15-751 through 23-15-755.

# CHAPTER 11.

# PRESIDENTIAL ELECTION LAW [REPEALED]

Sec.
23-11-1 through 23-11-21. Repealed.

## §§ 23-11-1 through 23-11-21. Repealed.

Repealed by Laws, 1986, ch. 495, § 345, eff from and after January 1, 1987.

§§ 23-11-1 through 23-11-21. [Codes, 1942, §§ 3203-101 to 3203-105, 3203-601, 3203-602; Laws, 1972, ch. 490, §§ 101-105, 601, 602]

**Editor's Notes —**

For present similar provisions, see §§ 23-15-221, 23-15-731, and 23-15-733.

# CHAPTER 13.

# MISSISSIPPI PRESIDENTIAL PREFERENCE PRIMARY AND DELEGATE SELECTION LAW [REPEALED]

Sec.
23-13-1 through 23-13-23. Repealed.

### §§ 23-13-1 through 23-13-23. Repealed.

Repealed by Laws, 1986, ch. 495, § 348, eff from and after January 1, 1987.

§§ 23-13-1 through 23-13-23. [Laws, 1986, ch. 484, §§ 1-12]

**Editor's Notes —**

For present similar provisions, see §§ 23-15-1081 through 23-15-1097.

# CHAPTER 15.

# MISSISSIPPI ELECTION CODE

Article 1. In General. 23-15-1
Article 3. Voter Registration. 23-15-11
Article 5. Times of Primary and General Elections. 23-15-171
Article 7. Election Officials. 23-15-211
Article 9. Supervisor's Districts and Voting Precincts. 23-15-281
Article 11. Nominations. 23-15-291
Article 13. Ballots. 23-15-331
Article 15. Voting Systems. 23-15-391
Article 17. Conduct of Elections. 23-15-541
Article 19. Absentee Ballots. 23-15-621
Article 21. Presidential and Vice-Presidential Electors. 23-15-771
Article 23. Disclosure of Campaign Finances. 23-15-801
Article 25. Vacancies in Office. 23-15-831
Article 27. Regulation of Elections. 23-15-871
Article 29. Election Contests. 23-15-911
Article 31. Judicial Offices. 23-15-971
Article 33. Members of Congress. 23-15-1031
Article 35. Political Parties. 23-15-1051
Article 37. Mississippi Presidential Preference Primary and Delegate Selection. 23-15-1081
Article 39. Repeal of Prior Election Laws. 23-15-1111

**Editor's Notes —**

In accordance with Sections 349 and 350, Chapter 495, Laws of 1986, the provisions of Chapter 495 were submitted on November 3, 1986, to the United States Attorney General in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended. On December 31, 1986, and January 2, 1987, the United States Attorney General interposed no objections to the changes involved in Chapter 495, Laws of 1986, thereby implementing the effective date of January 1, 1987, for the Election Code [§§ 23-15-1 et seq.].

# ARTICLE 1.

# IN GENERAL.

Sec.
23-15-1. Short title.
23-15-3. Definition of "ballot box."
23-15-5. Elections Support Fund created; use of funds; deposit of portion of monies into State General Fund.
23-15-7. Mississippi Voter Identification Card.

## § 23-15-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Election Code."

**HISTORY:**

Laws, 1986, ch. 495, § 1, eff from and after January 1, 1987.

**Editor's Notes —**

Laws of 2008, ch. 528, § 1, provides:

"SECTION 1. (1) There is created the Comprehensive Election Reform Review Panel to study Mississippi's election laws, the practical application of the laws, and any possible reforms needed to improve application of those laws.

"(2) The panel shall be composed of the following members:

"(a) The Chairperson and Vice Chairperson of the House of Representatives Apportionment and Elections Committee and the Senate Elections Committee;

"(b) One (1) person appointed by the Speaker of the House of Representatives;

"(c) One (1) person appointed by the Lieutenant Governor;

"(d) The Secretary of State, or his designee;

"(e) One (1) circuit clerk appointed by the Mississippi Association of Circuit Clerks;

"(f) One (1) election commissioner appointed by the Election Commissioners Association of Mississippi; and

"(g) One (1) person appointed by the Attorney General.

"(3) The Secretary of State or his designee shall serve as chairman of the panel. The panel shall meet at the call of the chairman and at its first meeting and shall select a vice chairman from among its membership. The vice chairman shall also serve as secretary of the panel and shall be responsible for keeping all records of the panel. A majority of the members of the panel shall constitute a quorum.

"(4) The panel shall examine voter identification requirements, early voting, voter registration, absentee voting, voting patterns, education, training of election officials and any other election law reforms deemed important by the panel. The panel shall file a report with the Clerk of the House of Representatives, the Secretary of the Senate and the Governor containing its findings and recommendations regarding Mississippi election laws by not later than December 1, 2008.

"(5) Legislative members of the panel shall receive per diem, travel or other expenses, if authorized by the Management Committee of the House of Representatives and Rules Committee of the Senate, from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem or expense for attending meetings of the panel shall be paid while the Legislature is in session.

"(6) Nonlegislative members of the panel shall receive no compensation for their service on the panel but may receive reimbursement for travel expenses incurred while engaged in official business of the panel in accordance with Section 25-3-41.

"(7) The panel shall be dissolved on December 1, 2008."

### RESEARCH REFERENCES

**Law Reviews.**

Mississippi and the Voting Rights Act: 1965-1982. 52 Miss. L. J. 803, December 1982.

Mississippi Election Code of 1986, 56 Miss L. J. 535, December 1986.

Stavis, A century of struggle for black enfranchisement in Mississippi: From the Civil War to the congressional challenge of 1965-and beyond. 57 Miss. L. J. 591, December, 1987.

Rhodes, Enforcing the Voting Rights Act in Mississippi through litigation. 57 Miss. L. J. 705, December, 1987.

**Practice References.**

Federal Election Laws and Regulations (Michie).

## § 23-15-3. Definition of "ballot box."

For purposes of this chapter, the term "ballot box" includes any ballot bag or other container of a type that has been approved for use in elections by the Secretary of State and is capable of receiving voted paper ballots. Such ballot bags or containers may be used for any purpose that a ballot box may be used under the provisions of law regulating elections in Mississippi or any other purpose authorized by the rules and regulations adopted by the Secretary of State.

**HISTORY:**

Laws, 2007, ch. 596, § 1; Laws, 2017, ch. 441, § 1, eff from and after July 1, 2017.

**Editor's Notes —**

On July 23, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2007, ch. 596.

**Amendment Notes —**

The 2017 amendment, in the first sentence, inserted "other" and "and is capable of receiving voted paper ballots"; deleted the former last two sentences, which read: "The Secretary of State shall approve a ballot bag to be used as provided in this section by December 31, 2007. Any changes to the ballot bag by the Secretary of State after December 31, 2007, shall be approved by the Legislature"; and made a minor stylistic change.

## § 23-15-5. Elections Support Fund created; use of funds; deposit of portion of monies into State General Fund.

(1) There is created in the State Treasury a special fund to be known as the Elections Support Fund. Monies derived from annual report fees imposed upon limited liability companies under Section 79-29-1203 shall be deposited into the Elections Support Fund. Unexpended amounts remaining in the fund at the end of the fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the fund shall be disbursed as provided in subsection (2) of this section. The expenditure of monies in the fund shall be under the direction of the Secretary of State as provided by subsection (2) of this section, and such funds shall be paid by the State Treasurer upon warrants issued by the Department of Finance and Administration.

(2)(a) Monies in the fund shall be used as follows:

(i) Fifty percent (50%) of the monies in the special fund shall be distributed annually to the counties, upon appropriation of the Legislature, based on the proportion that the population of a county bears to the total population in all counties of the state population according to the most recent information from the United States Census Bureau, and held in a separate fund solely for the purpose of acquiring, upgrading, maintaining or repairing voting equipment, systems and supplies, hiring temporary technical support, conducting elections using such voting equipment or systems, employing such personnel to conduct an election, and training election officials; and

(ii) The remaining fifty percent (50%) of the monies in the special fund shall be deposited in the State General Fund.

(b) The Secretary of State shall create standard training guidelines to assist counties in training election officials with the funds authorized under subsection (2)(a)(ii) of this section. Any criteria established by the Secretary of State for the purposes of this section shall be used in addition to any other training or coursework prescribed by the Secretary of State to train circuit clerks, poll managers and any other election officials participating in county elections.

(c) Notwithstanding any other provision of law, no monies from the Elections Support Fund shall be used by the Secretary of State or any person associated with the Office of the Secretary of State to provide or otherwise support expert testimony in any manner for any hearing, trial or election contest.

(3) From and after July 1, 2017, none of the monies deposited in the Elections Support Fund may be used to reimburse or otherwise defray any costs that the Office of the Secretary of State may incur in administering the fund.

(4) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

**HISTORY:**

Laws, 2010, ch. 532, § 2; Laws, 2016, ch. 459, § 45; Laws, 2017, ch. 441, § 2; Laws, 2017, 1st Ex Sess, ch. 7, § 5, eff from and after passage (approved June 23, 2017).

**Joint Legislative Committee Note —**

Section 2 of Chapter 441, Laws of 2017, effective from and after July 1, 2017 (approved April 18, 2017), amended this section. Section 5 of Chapter 7, Laws of 2017, First Extraordinary Session, effective from and after passage (approved June 23, 2017), also amended this section. As set out above, this section reflects the language of Section 5 of Chapter 7, Laws of 2017, First Extraordinary Session, which contains language that specifically provides that it supersedes § 23-15-5 as amended by Chapter 441, Laws of 2017.

**Editor's Notes —**

Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

**Amendment Notes —**

The first 2017 amendment (ch. 441), effective July 1, 2017, in (2)(a), inserted "and held in a separate fund solely" and "employing such personnel to conduct an election" in (i), and substituted "purpose of upgrading, maintaining or equipping" for "purpose of maintaining, upgrading or equipping" and added "and acquiring, upgrading or maintaining any other election-related site or system or providing technical training to election officials" in (ii).

The second 2017 amendment (ch. 7, 1st Ex Sess), effective June 23, 2017, in (2)(a), inserted "upon appropriation of the Legislature" in (i), and rewrote (ii), which read: "The remaining fifty percent (50%) of the monies in the special fund shall be allocated annually to the Secretary of State and expended for the purpose of maintaining, upgrading or equipping the Statewide Elections Management System"; and rewrote (3), which read: "From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law."

**Cross References —**

Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

## § 23-15-7. Mississippi Voter Identification Card.

(1) The Secretary of State shall negotiate a Memorandum of Understanding which shall be entered into by the Mississippi Department of Public Safety and the registrar of each county for the purpose of providing a Mississippi Voter Identification Card. The card shall be valid for the purpose of voter identification purposes under Section 23-15-563 and available only to registered voters of this state. No fee shall be charged or collected for the application for or issuance of a Mississippi Voter Identification Card. Any costs associated with the application for or issuance of a Mississippi Voter Identification Card shall be made payable from the state's General Fund.

(2) The registrar of each county shall provide a location in the registrar's office at which he or she shall accept applications for Mississippi Voter Identification Cards in accordance with the Mississippi Constitution; however, in counties having two (2) judicial districts the registrar shall provide a location in the registrar's office in each judicial district at which he or she shall accept applications for Mississippi Voter Identification Cards in accordance with the Mississippi Constitution.

(3) No person shall be eligible for a Mississippi Voter Identification Card

if the person has a valid unexpired Mississippi driver's license or an identification card issued under Section 45-35-1 et seq.

(4)(a) The Mississippi Voter Identification Card shall be captioned "MISSISSIPPI VOTER IDENTIFICATION CARD" and shall contain a prominent statement that under Mississippi law it is valid only as identification for voting purposes. The identification card shall include the following information regarding the applicant:

(i) Full legal name;

(ii) Legal residence address;

(iii) Mailing address, if different; and

(iv) Voting information.

(b) The Mississippi Voter Identification Card shall also contain the date the voter identification card was issued, the county in which the voter is registered and such other information as required by the Secretary of State.

(5) The application shall be signed and sworn to by the applicant and any falsification or fraud in the making of the application shall constitute false swearing under Section 97-7-35.

(6) The registrar shall require presentation and verification of any of the following information during the application process before issuance of a Mississippi Voter Identification Card:

(a) A photo identity document; or

(b) Documentation showing the person's date and place of birth; or

(c) A social security card; or

(d) A Medicare card; or

(e) A Medicaid card; or

(f) Such other acceptable evidence of verification of residence in the county as determined by the Secretary of State.

(7) A Mississippi Voter Identification Card shall remain valid for as long as the cardholder remains qualified to vote. It shall be the duty of a person who moves his or her residence within this state to surrender his or her voter identification card to the registrar of the county of his or her new residence and that person may thereafter apply for and receive a new card if such person is eligible under this section. It shall be the duty of a person who moves his or her residence outside this state or who ceases to be qualified to vote to surrender his or her card to the registrar who issued it.

(8) The Secretary of State, in conjunction with the Mississippi Department of Public Safety, shall adopt rules and regulations for the administration of this section.

**HISTORY:**

Laws, 2012, ch. 526, § 2; Laws, 2017, ch. 441, § 3, eff from and after passage (approved Apr. 18, 2017).

**Editor's Notes —**

The effective date of the bill that amended this section, Chapter 526, Laws of 2012 (House Bill No. 921), is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bill was submitted to the United States Attorney General under Section 5, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. Chapter 526 was submitted to the United States Attorney General before the *Shelby County* decision was rendered. In a letter dated August 5, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 526 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 526, so Chapter 526 became effective on the date of the response letter from the United States Attorney General, August 5, 2013.

Laws of 2017, ch. 441, § 205 provides:

"SECTION 205. This act shall take effect and be in force from and after July 1, 2017, except for Sections 3, 9, 13, 14, 15, 18, 19, 21, 24, 31, 70, 108, 115, 116, 117, 118, 119, 184 and 188, which shall take effect and be in force from and after passage [approved April 18, 2017]."

**Amendment Notes —**

The 2017 amendment, effective April 18, 2017, deleted "resides at the same address and" following "as long as the cardholder" in (7); and made minor stylistic changes.

## ARTICLE 3.

## VOTER REGISTRATION.

Subarticle A. Qualification of Electors. .................................. 23-15-11
Subarticle B. Procedures for Registration. .................................. 23-15-31
Subarticle C. Appeals Upon Denial of Registration. .................. 23-15-61
Subarticle D. Liability of the Registrar, Penalties and Injunctive Relief. .................................................. 23-15-91
Subarticle E. Registration Records. ........................................ 23-15-111
Subarticle F. Purging. ...................................................... 23-15-151
Subarticle G. Statewide Centralized Voter System. .................... 23-15-163
Subarticle H. Compliance with Help America Vote Act of 2002. ....... 23-15-169

## SUBARTICLE A.

## QUALIFICATION OF ELECTORS.

Sec.
23-15-11. Qualifications, generally.
23-15-13. Change of residency to new ward or voting precinct within same municipality.
23-15-14. Repealed.
23-15-15. Documentation required of naturalized citizens.
23-15-17. Reporting and investigation of false registration.
23-15-19. Persons convicted of certain crimes not to be registered.
23-15-21. Non-citizen not to register or vote.

### § 23-15-11. Qualifications, generally.

Every inhabitant of this state, except persons adjudicated to be non compos mentis, who is a citizen of the United States of America, eighteen (18) years old and upwards, who has resided in this state for thirty (30) days and for thirty (30) days in the county in which he or she seeks to vote, and for thirty (30) days in the incorporated municipality in which he or she seeks to vote, and who has been duly registered as an elector under Section 23-15-33, and who has never been convicted of vote fraud or of any crime listed in Section 241, Mississippi Constitution of 1890, shall be a qualified elector in and for the county, municipality and voting precinct of his or her residence, and shall be entitled to vote at any election upon compliance with Section 23-15-563. If the thirtieth day to register before an election falls on a Sunday or legal holiday, the registration applications submitted on the business day immediately following the Sunday or legal holiday shall be accepted and entered in the Statewide Elections Management System for the purpose of enabling voters to vote in the next election. Any person who will be eighteen (18) years of age or older on or before the date of the general election and who is duly registered to vote not less than thirty (30) days before the primary election associated with the general election, may vote in the primary election even though the person has not reached his or her eighteenth birthday at the time that the person seeks to vote at the primary election. No others than those specified in this section shall be entitled, or shall be allowed, to vote at any election.

**HISTORY:**

Derived from 1972 Code § 21-11-1 [Codes, 1892, § 3028; 1906, § 3433; Hemingway's 1917, § 5993; 1930, § 2595; 1942, § 3374-60; Laws, 1950, ch. 491, § 60; Laws, 1984, ch. 457, § 2; repealed by Laws, 1986, ch. 495, § 329], § 23-3-11 [Codes, 1942, § 3160; Laws, 1935, ch. 19; Laws, 1936, ch. 320; Laws, 1955 Ex ch. 100, § 2; repealed by Laws, 1986, ch. 495, § 333], and § 23-3-85 [Codes, 1892, § 3631; 1906, § 4138; Hemingway's 1917, § 6772; 1930, § 6207; 1942, § 3235; Laws, 1952, ch. 398, § 2; Laws, 1955, Ex Sess, ch. 101; Laws, 1962, ch. 575; Laws, 1965 Ex Sess, ch. 18, § 1; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 2; Laws, 1997, ch. 315, § 1; Laws, 2000, ch. 430, § 2; Laws, 2008, ch. 442, § 10; Laws, 2012, ch. 517, § 1; Laws, 2012, ch. 526, § 4; Laws, 2017, ch. 441, § 171, eff from and after July 1, 2017.

**Joint Legislative Committee Note —**

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the second sentence. The words "not less then thirty (30)" were changed to "not less than thirty (30)". The Joint Committee ratified the correction at its April, 28, 1999 meeting.

This section was amended by Section 1 of Chapter 517, Laws of 2012, approved May 2, 2012, and effective from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended (November 26, 2012). The section was also amended by Section 4 of Chapter 526, Laws of 2012, approved May 17, 2012, and effective from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended (August 5, 2013). Section 1-1-109 gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments, contingent upon preclearance, as consistent with the legislative intent at the August 16, 2012, meeting of the Committee.

**Editor's Notes —**

The United States Attorney General, by letter dated June 11, 1997, interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1997, ch. 315, § 1.

On August 11, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 430.

The effective date of the bill that amended this section, Chapter 526, Laws of 2012 (House Bill No. 921), is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bill was submitted to the United States Attorney General under Section 5, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. Chapter 526 was submitted to the United States Attorney General before the *Shelby County* decision was rendered. In a letter dated August 5, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 526 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 526, so Chapter 526 became effective on the date of the response letter from the United States Attorney General, August 5, 2013.

By letter dated November 26, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 517.

**Amendment Notes —**

The 2017 amendment added the second sentence; and made gender neutral changes.

**Cross References —**

Registering to vote by mail-in application, see § 23-15-47.

Residency of prisoner as affected by incarceration in facility of Department of Corrections, see § 47-1-63.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2.-5. [Reserved for future use.]
6. Under former Section 21-11-1.
7. Under former Section 23-3-11.
8. Under former Section 23-5-85.

**1. In general.**

Public interest exception to mootness did not apply to an unsuccessful candidate's election challenge where although Miss. Code Ann. § 23-15-11 (2015) required voters to vote only in their voting precinct, the poll managers provided a suitable substitute by directing voters to go next door, sign the pollbook, and obtain a receipt before returning to vote, and thus, the votes cast before the pollbooks were delivered to the correct voting location were not illegal under Miss. Code Ann. § 23-15-249. Perkins v. McAdams, 234 So. 3d 413, 2017 Miss. LEXIS 419 (Miss. 2017).

Absentee ballot could not be counted in a primary election because the voter failed to register more than 30 days prior to the election. Smith v. Hollins, 905 So. 2d 1267, 2005 Miss. LEXIS 388 (Miss. 2005).

Provisions in Mississippi Election Code pertaining to registration of voters do not violate § 2 of the Voting Rights Act (42 USCS § 1973(a)) simply because there might be better registration procedures which could be enacted into law. Mississippi State Chapter, Operation Push v. Mabus, 717 F. Supp. 1189, 1989 U.S. Dist. LEXIS 9930 (N.D. Miss. 1989), aff'd, 932 F.2d 400, 1991 U.S. App. LEXIS 10878 (5th Cir. Miss. 1991).

Mississippi's voter registration laws are clearly a voting qualification or prerequisites to voting, under language of § 2, as amended, 42 USCS § 1973(a), because no voter is qualified as elector until he is first registered. Mississippi State Chapter, Operation Push v. Allain, 674 F. Supp. 1245, 1987 U.S. Dist. LEXIS 10925 (N.D. Miss. 1987).

Whereas instances of racially polarized voting are pertinent in challenges to electoral processes, voting behavior or practices are not germaine to challenged voter registration procedures or to determination of discriminatory impact of registration practices. Racial appeals in campaigns for elections bear little relevance to state's registration procedures. Mississippi State Chapter, Operation Push v. Allain, 674 F. Supp. 1245, 1987 U.S. Dist. LEXIS 10925 (N.D. Miss. 1987).

**2.-5. [Reserved for future use.]**

**6. Under former Section 21-11-1.**

A Negro citizen originally denied the right to register because of discrimination, subsequently registered pursuant to a federal court order, who would be denied the right to vote in municipal elections for failure to pay poll taxes as required by law and because her registration took place after the legal deadline, has standing to bring a class action on behalf of all the Negro voters similarly situated to enjoin the election, and where the Federal District Court refused to grant the injunction the cause was remanded with directions to set aside the election which was held, to devise a plan for a new election, set a new cut-off date for registration, and to provide that persons otherwise entitled to vote should not be denied that right for failure to pay poll taxes if required taxes were tendered to tax collector within 45 days prior to election. Hamer v. Campbell, 358 F.2d 215, 1966 U.S. App. LEXIS 6896 (5th Cir. Miss.), cert. denied, 385 U.S. 851, 87 S. Ct. 76, 17 L. Ed. 2d 79, 1966 U.S. LEXIS 781 (U.S. 1966).

Town marshal held properly removed from office as result of quo warranto proceedings, where he failed to show residence in town as required by §§ 241, 250 of Constitution, and this section. Jones v. State, 207 Miss. 208, 42 So. 2d 123, 1949 Miss. LEXIS 330 (Miss. 1949).

Where taxpayer delivered check to tax collector on January 31, 1934, with request to hold check until March and check was not presented for payment until May 7, 1934, but tax receipt issued April 30, 1934, was dated February 1, 1934, taxpayer held not qualified elector and hence not eligible for election to office of alderman in December, 1934. Wylie v. Cade, 174 Miss. 426, 164 So. 579, 1935 Miss. LEXIS 82 (Miss. 1935).

Where taxpayer's check is unconditionally delivered on or before February 1 to tax collector who accepts check which in due course is deposited with reasonable promptness and paid by drawee bank on its first presentation, payment will relate back to date of delivery of check to tax collector so as to qualify taxpayer as elector. Wylie v. Cade, 174 Miss. 426, 164 So. 579, 1935 Miss. LEXIS 82 (Miss. 1935).

Illegal voting at any municipal election is an indictable offense. Sample v. Verona, 94 Miss. 264, 48 So. 2, 1908 Miss. LEXIS 1 (Miss. 1908).

The word "elector" is synonymous with voter. Greene v. Rienzi, 87 Miss. 463, 40 So. 17, 1905 Miss. LEXIS 172 (Miss. 1905).

The corresponding section of the Code 1892, in so far as it requires voters at municipal elections to vote in the wards of their residence, is constitutional and warranted by § 245 of the Constitution, empowering the legislature to impose qualifications additional to those provided by §§ 241, 242 of the Constitution. State ex rel. Kierskey v. Kelly, 81 Miss. 1, 32 So. 909, 1902 Miss. LEXIS 118 (Miss. 1902).

The mistaken belief that one has in due time paid "all taxes legally required of him," however honestly obtained, will not relieve a delinquent of the effect of his failure to secure the privilege of an elector by complying with the requirements of § 241 of the Constitution; Nor will the subsequent payment of the same relieve him of the delinquency. Roane ex rel. Tunstall v. Matthews, 75 Miss. 94, 21 So. 665, 1897 Miss. LEXIS 88 (Miss. 1897).

**7. Under former Section 23-3-11.**

For purposes of § 4(a) of the Voting Rights Act of 1965 (42 USCS § 1973b(a) [now 52 USCS § 10303]), pertaining to reinstatement of state voting registration tests, the fact that a county has administered voting registration laws in a fair and impartial manner and has recently made significant strides toward equalizing and integrating its school system will not warrant reinstatement of the literacy test for the county's voters, where (1) the county throughout the years, systematically deprived its black citizens of the educational opportunities that it granted its white citizens, and (2) impartial administration of the literacy test would serve only to perpetuate these inequities in a different form. Gaston County v. United States, 395 U.S. 285, 89 S. Ct. 1720, 23 L. Ed. 2d 309, 1969 U.S. LEXIS 1437 (U.S. 1969).

On direct appeal to the United States Supreme Court from a decision of the United States District Court for the District of Columbia, in an action by a county seeking reinstatement of a literacy test for voters, the District Court's finding that the county has not met its burden of proving, as required by § 4(a) of the Voting Rights Act of 1965 (42 USCS § 1973b(a) [now 52 USCS § 10303]), that the use of the literacy test did not discriminatorily deprive Negroes of the right to vote, will not be held clearly erroneous where (1) evidence was presented that the county's segregated Negro schools and their teachers were inferior and that Negro citizens of the county had completed far less schooling than whites, and (2) it could be inferred that among Negro children compelled to endure a segregated and inferior education, fewer would achieve any given degree of literacy than would be so with their better educated white contemporaries, and that the county's inferior Negro schools provided many of its Negro residents with an inferior education and gave many others no incentive to enter or remain in school. Gaston County v. United States, 395 U.S. 285, 89 S. Ct. 1720, 23 L. Ed. 2d 309, 1969 U.S. LEXIS 1437 (U.S. 1969).

A Negro citizen, originally denied the right to register because of discrimination, subsequently registered pursuant to a federal court order, who would be denied the right to vote in municipal elections for failure to pay poll taxes as required by law and because her registration took place after the legal deadline, has standing to bring a class action on behalf of all the Negro voters similarly situated to enjoin the election, and where the Federal District Court refused to grant the injunction the cause was remanded with directions to set aside the election which was held, to devise a plan for a new election, set a new cut-off date for registration, and to provide that persons otherwise entitled to vote should not be denied that right for failure to pay poll taxes if required taxes were tendered to tax collector within 45 days prior to election. Hamer v. Campbell, 358 F.2d 215, 1966 U.S. App. LEXIS 6896 (5th Cir. Miss.), cert. denied, 385 U.S. 851, 87 S. Ct. 76, 17 L. Ed. 2d 79, 1966 U.S. LEXIS 781 (U.S. 1966).

All provisions of Mississippi law which condition the right to vote on the ability to read and write, or contain a "test or device" as defined in Section 4(c) of the Voting Rights Act of 1965 [52 USCS § 10303, formerly codified as 42 USCS § 1973b(c)] have no force or effect during the period of suspension prescribed in said Act. United States v. Mississippi, 256 F. Supp. 344, 1966 U.S. Dist. LEXIS 9894 (S.D. Miss. 1966).

The county registrar of Panola County was enjoined from using any of the conditions of this section [Code 1942, § 3235] as a prerequisite to registration other than those that had theretofore been used with respect to the registration of white applicants. United States v. Duke, 332 F.2d 759, 1964 U.S. App. LEXIS 5292 (5th Cir. Miss. 1964).

Mandamus will not be to compel an election commission to place on the ballot the name of a person whom it has determined not to be qualified as a candidate. Powe v. Forrest County Election Com., 249 Miss. 757, 163 So. 2d 656, 1964 Miss. LEXIS 433 (Miss. 1964).

To require Negroes desiring to pay poll taxes qualifying them to vote to produce verification of the correctness of their voting precincts, not required of other taxpayers, and to see the sheriff personally when others were not required to do so, constitutes a violation of the Federal Civil Rights Act. United States v. Dogan, 314 F.2d 767, 1963 U.S. App. LEXIS 6312 (5th Cir. Miss. 1963).

Person, residing in Louisiana when he purchased land in this state, with intention of building his home thereon, more than two years before general election at which his vote was protested, but actual removal to this state was less than two years before such election, was not a qualified elector. Smith v. Deere, 195 Miss. 502, 16 So. 2d 33, 1943 Miss. LEXIS 181 (Miss. 1943).

That is properly the domicile of a person where he has his true, fixed, permanent home and principal establishment, and to which whenever he is absent, he has the intention of returning. Smith v. Deere, 195 Miss. 502, 16 So. 2d 33, 1943 Miss. LEXIS 181 (Miss. 1943).

A domicile continues until another is acquired; before a domicile can be considered lost or changed, a new domicile must be acquired by removal to a new locality with intent to remain there, and the old domicile must be abandoned without intent to return thereto. Smith v. Deere, 195 Miss. 502, 16 So. 2d 33, 1943 Miss. LEXIS 181 (Miss. 1943).

An exemptionist over 60 years of age who did not pay his poll tax was disqualified to vote in a primary election. Hayes v. Abney, 186 Miss. 208, 188 So. 533, 1939 Miss. LEXIS 209 (Miss. 1939).

Registration for the election district in which one offers to vote is necessary to entitle him to vote. Perkins v. Carraway, 59 Miss. 222, 1881 Miss. LEXIS 108 (Miss. 1881).

**8. Under former Section 23-5-85.**

Although Mississippi Code § 21-1-45 contains no dispositive definition for the term “qualified electors,” it would be inappropriate to adopt the definition of that term found in Mississippi Code § 23-5-85 [Repealed], and to employ the entire panoply of rules applicable to public elections to a proceeding to obtain annexation of unincorporated area by an adjacent existing municipality. Schmidt v. City of Jackson, 494 So. 2d 348 (Miss. 1986).

The provisions of Article 12 § 251 of the Mississippi Constitution of 1890 and Code 1942, § 3235 that prescribe a period of 4-months registration for qualified electors before voting in elections are held unconstitutional, void and of no effect, as contrary to the equal protection clause of the Fourteenth Amendment, and the enforcement hereafter of such provisions is enjoined. Ferguson v. Williams, 343 F. Supp. 654, 1972 U.S. Dist. LEXIS 13520 (N.D. Miss. 1972).

Those residence requirements for a qualified elector which requires a residence of one year in the state, one year in the county, and 6 months in the precinct, or municipality, clearly violate the equal protection clause of the Fourteenth Amendment to the Constitution of the United States; and those requirements as contained in § 241 of the Mississippi Constitution and Code 1942, § 3235 are clearly not necessary to further a compelling state interest are violative of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States and are null and void. Graham v. Waller, 343 F. Supp. 1, 1972 U.S. Dist. LEXIS 13604 (S.D. Miss. 1972).

## OPINIONS OF THE ATTORNEY GENERAL

Under general registration statute, Miss. Code Section 23-15-11, newly annexed county electors must reside in municipality for thirty days to be eligible to vote in municipal elections. Hewes, Mar. 5, 1993, A.G. Op. #92-0969.

A seventeen-year-old who will be eighteen years of age on or before the date of the special election may register to vote thirty days or more prior to a special election. 1997 Miss. Op. Att’y Gen. 725.

A computerized voter list that does not have the electors’ signatures on it is considered exempt for purposes of the Mississippi Public Records Act of 1983 if the information on the list was obtained from exempted records. 1997 Miss. Op. Att’y Gen. 760.

A person may not qualify as an elector in two adjoining counties by claiming to simultaneously reside in both such counties; absent a conclusive indicator of residency, such as filing for homestead exemption, the question of qualifying as an elector should be determined, based on the facts and circumstances of each case, by reference to other relevant factors including the intent to remain, indefinitely, in a county where an actual residence has been established. 1998 Miss. Op. Att'y Gen. 98.

Even in a citywide election, an individual may only cast a ballot in the voting precinct or ward in which he or she is registered to vote. 1999 Miss. Op. Att'y Gen. 697.

A registered voter may not cast a lawful ballot in a voting precinct other than the precinct where he or she resides. 2003 Miss. Op. Att'y Gen. 345.

If a candidate establishes his residence within the corporate limits of a municipality at least 30 days prior to the election and registers to vote and meets all other qualifications to be mayor, he could qualify to run for that office. 2006 Miss. Op. Att'y Gen. 400.

A candidate could establish his residence within the corporate limits 30 days before the election and then file his qualifying papers at least 20 days prior to the municipal special election and be eligible to have his name placed on the ballot. 2006 Miss. Op. Att'y Gen. 400.

RESEARCH REFERENCES

**ALR.**

State voting rights of residents of military establishments. 34 A.L.R.2d 1193.

Effect of conviction under federal law, or law of another state or country, on right to vote or hold public office. 39 A.L.R.3d 303.

Residence of students for voting purposes. 44 A.L.R.3d 797.

Validity, construction, and application of state criminal disenfranchisement provisions. 10 A.L.R.6th 31.

**Am. Jur.**

25 Am. Jur. 2d, Elections §§ 148, 149, 159-171.

**CJS.**

29 C.J.S., Elections §§ 37–52.

**Law Reviews.**

Mississippi and the Voting Rights Act: 1965-1982. 52 Miss. L. J. 803, December 1982.

Stavis, A century of struggle for black enfranchisement in Mississippi: From the Civil War to the congressional challenge of 1965-and beyond. 57 Miss. L. J. 591, December, 1987.

Rhodes, Enforcing the Voting Rights Act in Mississippi through litigation. 57 Miss. L. J. 705, December, 1987.

Mississippi Election Code of 1986, 56 Miss L. J. 535, December 1986.

## § 23-15-13. Change of residency to new ward or voting precinct within same municipality.

(1) An elector who moves from one (1) ward or voting precinct to another ward within the same municipality or voting precinct within the same county shall not be disqualified to vote, but he or she shall be entitled to have his or her registration transferred to his or her new ward or voting precinct upon making written request therefor at any time up to thirty (30) days before the election at which he or she offers to vote, and if the removal occurs within thirty (30) days of such election he or she shall be entitled to vote in his or her new ward or voting precinct by affidavit ballot as provided in Section 23-15-573. If the thirtieth day to transfer the elector's registration before an election falls on a Sunday or legal holiday, the transfer of the elector's registration submitted on the business day immediately following the Sunday or legal holiday shall be accepted and entered into the Statewide Elections Management System for the purpose of enabling voters to vote in the next election.

(2) If an elector requests a change in his or her address under Section 23-15-49 and the address is located in a precinct in the county or municipality that differs from the precinct as reflected in the then current registration records, the request shall be treated in the same manner as a written request to transfer the elector's registration under subsection (1) of this section.

**HISTORY:**

Derived from 1972 Code § 21-11-1 [Codes, 1892, § 3028; 1906, § 3433; Hemingway's 1917, § 5993; 1930, § 2595; 1942, § 3374-60; Laws, 1950, ch. 491, § 60; repealed by Laws, 1986, ch. 495, § 329]; en, Laws, 1986, ch. 495, § 3; Laws, 2000, ch. 430, § 3; Laws, 2016, ch. 416, § 2; Laws, 2017, ch. 441, § 188, eff from and after passage (approved Apr. 18, 2017).

**Editor's Notes —**

On August 11, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 430.

Laws of 2017, ch. 441, § 205 provides:

"SECTION 205. This act shall take effect and be in force from and after July 1, 2017, except for Sections 3, 9, 13, 14, 15, 18, 19, 21, 24, 31, 70, 108, 115, 116, 117, 118, 119, 184 and 188, which shall take effect and be in force from and after passage [approved April 18, 2017]."

**Amendment Notes —**

The 2017 amendment, effective April 18, 2017, in (1), inserted "(1)" near the beginning, and added the last sentence; and made a minor stylistic change.

**Cross References —**

Registering to vote by mail-in application, see § 23-15-47.

Residency of prisoner as affected by incarceration in facility of Department of Corrections, see § 47-1-63.

## OPINIONS OF THE ATTORNEY GENERAL

It is duty and responsibility of registrar, upon request of individual voter, to make necessary changes on all appropriate registration records and enter appropriate data into computer to reflect any change in voter's precinct necessitated by change in that voter's residence; however, task of making changes on pollbooks and registration books is ministerial task that should be performed by election commission in their purging activities if registrar fails to act. 1990 Miss. Op. Att'y Gen. 201.

If a qualified elector of a county moves within the county less than 30 days before an election, pursuant to this section he is not disqualified and would be entitled to vote in the precinct of his residence by affidavit ballot if his name does not appear on the poll book of his precinct. Assuming such affidavit is properly executed and all required information is given in the affidavit and the prescribed forms, the ballot would be a lawful one and would be counted. 2003 Miss. Op. Att'y Gen. 497.

## RESEARCH REFERENCES

**CJS.**

29 C.J.S., Elections § 127.

## § 23-15-14. Repealed.

Repealed by Laws, 2004, ch. 305, § 17, eff from and after July 12, 2004, the date said ch. 305 was effectuated under Section 5 of the Voting Rights Act of 1965.

[Laws, 1988, ch. 350, § 1, eff from and after November 29, 1988 (the date the United States Attorney General interposed no objection to the codification of this section).]

**Editor's Notes —**

On July 12, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the repeal of this section by Laws of 2004, ch. 305, § 17.

Former § 23-15-14 provided that certain municipal residents who are registered to vote only in county elections shall be registered to vote in municipal elections.

## § 23-15-15. Documentation required of naturalized citizens.

It shall be the duty of any person who has acquired citizenship by order or decree of naturalization and who is otherwise qualified to register and vote under the laws of the State of Mississippi to present or exhibit to the registrar of the county of his or her residence, at or before the time he or she may offer to register, a certified copy of the final order or decree of naturalization, or a certificate of naturalization or duplicate thereof, or a certified copy of such certificate of naturalization or duplicate; otherwise he or she shall not be allowed to register or to vote.

**HISTORY:**

Derived from 1972 Code § 23-5-39 [Codes, 1930, § 6188; 1942, § 3216; Laws, 1924, ch. 154; Laws, 1934, ch. 310; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 4; Laws, 2017, ch. 441, § 4, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment deleted "and every" following "duty of any," substituted "registrar of the county" for "circuit clerk of the county," and inserted "or she" near the end.

**RESEARCH REFERENCES**

**Am. Jur.**

25 Am. Jur. 2d, Elections §§ 148, 149, 182.

**CJS.**

29 C.J.S., Elections § 64.

**Law Reviews.**

Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

### § 23-15-17. Reporting and investigation of false registration.

Any person who has reasonable cause to suspect that a false registration as provided in Section 97-13-25 has occurred may notify any authorized law enforcement officer with proper jurisdiction. Upon such notification, law enforcement officer shall be required to conduct an investigation into the matter and file a report with the registrar and the appropriate district attorney. The registrar shall, within twenty-four (24) hours of receipt of the investigating officer's report, accept or reject the registration. Any person who so notifies an authorized law enforcement officer shall be presumed to be acting in good faith and shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed.

**HISTORY:**

Derived from 1972 Code § 23-5-43 [Codes, 1880, § 113; 1892, § 3616; 1906, § 4123; Hemingway's 1917, § 6757; 1930, § 6190; 1942, § 3218; repealed by Laws, 1986, ch. 495, § 335]; en. Laws, 1986, ch. 495, § 5; Laws, 1991 of ch. 440, § 4; Laws, 2017, ch. 441, § 172, eff from and after July 1, 2017.

**Editor's Notes —**

The United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1991, ch. 440, § 4, on May 1, 1992.

**Amendment Notes —**

The 2017 amendment deleted (1), which read: "Any person who shall knowingly procure his or any other person's registration as a qualified elector when the person whose registration is being procured is not entitled to be registered, or when the person whose registration is being procured is being registered under a false name, or when the person whose registration is being procured is being registered as a qualified elector in any other voting precinct than that in which he resides, shall be guilty of a felony and, upon conviction, be fined not more than Five Thousand Dollars ($5,000.00) or imprisoned not more than five (5) years, or both. The same penalty shall apply to anyone who is disqualified for any cause and shall reregister before removal of such disqualification to avoid the same, and to all who shall in any way aid in such false registration"; deleted the subsection

(2) designation; inserted "as provided in Section 97-13-25"; and made minor stylistic changes.

**Cross References —**
Registering to vote by mail-in application, see § 23-15-47.

### JUDICIAL DECISIONS

**1. In general.**
Evidence showing that a person whose name, birth date, and place of birth matched those of a voter, had voted in another state three weeks before the voter cast her vote in a primary election showed that the voter violated Miss. Code Ann. § 23-15-17(1); thus, the voter's absentee ballot was not counted in the primary election. Smith v. Hollins, 905 So. 2d 1267, 2005 Miss. LEXIS 388 (Miss. 2005).

### RESEARCH REFERENCES

**Lawyers' Edition.**
Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L. Ed. 2d 1960.

**Law Reviews.**
Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

## § 23-15-19. Persons convicted of certain crimes not to be registered.

Any person who has been convicted of vote fraud or any crime listed in Section 241, Mississippi Constitution of 1890, such crimes defined as "disenfranchising," shall not be registered, or if registered the name of the person shall be removed from the Statewide Elections Management System by the registrar or the election commissioners of the county of his or her residence. Whenever any person shall be convicted in the circuit court of his or her county of a disenfranchising crime, the county registrar shall thereupon remove his or her name from the Statewide Elections Management System; and whenever any person shall be convicted of a disenfranchising crime in any other court of any county, the presiding judge of the court shall, on demand, certify the fact in writing to the registrar of the county in which the voter resides, who shall thereupon remove the name of the person from the Statewide Elections Management System and retain the certificate as a record of his or her office.

**HISTORY:**
Derived from 1972 Code § 23-5-35 [Codes 1871, § 343; 1880, § 108; 1892, § 3614; 1906, § 4120; Hemingway's 1917, § 6754; 1930, § 6186; 1942, § 3214; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 6; Laws, 2012, ch. 517, § 2; Laws, 2017, ch. 441, § 5, eff from and after July 1, 2017.

**Editor's Notes —**
By letter dated November 26, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 517.

**Amendment Notes —**
The 2017 amendment rewrote the section, which read: "Any person who has been convicted of vote fraud or of any crime listed in Section 241, Mississippi Constitution of 1890, shall not be registered, or if registered the name of the person shall be erased from the registration book on which it may be found by the registrar or by the election commissioners. Whenever any person shall be convicted in the circuit court of his county of any of those crimes, the registrar shall thereupon erase his name from the registration book; and whenever any person shall be convicted of any of those crimes in any other court of any county, the presiding judge of the court shall, on demand, certify the fact in writing to the registrar, who

shall thereupon erase the name of the person from the registration book and file the certificate as a record of his office."

**Cross References —**

Residency of prisoner as affected by incarceration in facility of Department of Corrections, see § 47-1-63.

## JUDICIAL DECISIONS

### ANALYSIS

1. Generally.
2.-5. [Reserved for future use.]
6. Under former Section 23-5-35.

**1. Generally.**

Ballot of a convicted felon was properly invalidated because the candidate who sought to have the vote counted did not prove by a preponderance of the evidence that the voter was eligible to vote. Smith v. Hollins, 905 So. 2d 1267, 2005 Miss. LEXIS 388 (Miss. 2005).

**2.-5. [Reserved for future use.]**

**6. Under former Section 23-5-35.**

A felon's due process claim to a pre-disenfranchisement hearing was without merit as a matter of law and summary judgment was properly granted on such issue, where to mandate a hearing as a prerequisite to any action by the election board would cost the state substantial time and money, and it would not guarantee, any more than the current mechanism, that only felons within § 23-5-35 are disenfranchised. Williams v. Taylor, 677 F.2d 510, 1982 U.S. App. LEXIS 18677 (5th Cir. Miss. 1982).

A new trial would be required on a felon's claim that the election board's disenfranchisement of him pursuant to §§ 23-5-35, 23-5-37 [Repealed.] was unconstitutionally selective, where the board had not acted according to the requisite procedure established in § 23-5-37 [Repealed.], and its noncompliance with this procedure may have created a pattern of selective enforcement. Williams v. Taylor, 677 F.2d 510, 1982 U.S. App. LEXIS 18677 (5th Cir. Miss. 1982).

## RESEARCH REFERENCES

**ALR.**

What constitutes "conviction" within constitutional or statutory provision disenfranchising one convicted of crime. 36 A.L.R.2d 1238.

Effect of conviction under federal law, or law of another state or country, on right to vote or hold public office. 39 A.L.R.3d 303.

**Am. Jur.**

25 Am. Jur. 2d, Elections §§ 168-171.

**CJS.**

29 C.J.S., Elections § 51–62.

**Law Reviews.**

Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

## § 23-15-21. Non-citizen not to register or vote.

It shall be unlawful for any person who is not a citizen of the United States or the State of Mississippi to register or to vote in any primary, special or general election in the state.

**HISTORY:**

Derived from 1972 Code § 23-5-41 [Codes, 1930, § 6189; 1942, § 3217; Laws, 1924, ch. 154; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 7, eff from and after January 1, 1987.

## RESEARCH REFERENCES

**Am. Jur.**

25 Am. Jur. 2d, Elections §§ 148, 149.

**CJS.**

29 C.J.S., Elections § 41.

# SUBARTICLE B.

# PROCEDURES FOR REGISTRATION.

Sec.
23-15-31. Elections to which subarticle applicable; duty, power and authority of certain election officials.
23-15-33. Registrar to register voters.
23-15-35. Clerk of municipality to be registrar; registration books; form of application for registration; registration of county electors by clerk.
23-15-37. Keeping registration books; registration of voters; voter registration in public schools.
23-15-39. Form of application for registration; allowances for office supplies; determination on application; notice to applicant; assistance to applicant; voter registration number; fees and costs; forwarding of application.
23-15-41. Endorsement of application; completion of registration.
23-15-43. Automatic review where person is not approved for registration.
23-15-45. Notice to person denied registration.
23-15-47. Registering to vote by mail-in application.
23-15-49. Change of voter registration information by elector on secured website.

## § 23-15-31. Elections to which subarticle applicable; duty, power and authority of certain election officials.

All of the provisions of this subarticle shall be applicable, insofar as possible, to municipal, primary, general and special elections; and wherever therein any duty is imposed or any power or authority is conferred upon the county registrar, county election commissioners or county executive committee with reference to a state and county election, such duty shall likewise be conferred upon the municipal registrar, municipal election commission or municipal executive committee with reference to any municipal election.

**HISTORY:**

Derived from 1972 Code § 23-5-313 [Codes, 1942, § 3203-603; Laws, 1972, ch. 490, § 603; repealed by Laws, 1986, ch. 495, § 337]; en, Laws, 1986, ch. 495, § 8; Laws of 1993, ch. 528, § 18; Laws, 2017, ch. 441, § 6, eff from and after July 1, 2017.

**Editor's Notes —**

The United States Attorney General, by letter dated August 16, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1993, ch. 528, § 18.

**Amendment Notes —**

The 2017 amendment deleted "imposed and such power and authority shall likewise be" preceding "conferred upon the municipal registrar."

### RESEARCH REFERENCES

**Am. Jur.**

25 Am. Jur. 2d, Elections §§ 177, 183.

**CJS.**

29 C.J.S., Elections § 64.

**Law Reviews.**

Stavis, A century of struggle for black enfranchisement in Mississippi: From the Civil War to the congressional challenge of 1965-and beyond. 57 Miss. L. J. 591, December, 1987.

Rhodes, Enforcing the Voting Rights Act in Mississippi through litigation. 57 Miss. L. J. 705, December, 1987.

## § 23-15-33. Registrar to register voters.

(1) Every person entitled to be registered as an elector in compliance with

the laws of this state and who has signed his or her name on and properly completed the application for registration to vote shall be registered by the county registrar in the voting precinct of the residence of such person through the Statewide Elections Management System.

(2) Every person entitled to be registered as an elector in compliance with the laws of this state and who registers to vote pursuant to the National Voter Registration Act of 1993 shall be registered by the county registrar in the voting precinct of the residence of such person through the Statewide Elections Management System.

**HISTORY:**

Derived from 1972 Code § 23-5-31 [Codes, 1880, § 106; 1892, § 3611; 1906, § 4117; Hemingway's 1917, § 6751; 1930, § 6184; 1942, § 3212; Laws, 1955, Ex ch. 99; Laws, 1962, ch. 569, § 2; Laws, 1965 Ex Sess, ch. 13, § 1; Laws, 1978, ch. 393, § 2; Laws, 1984, Ch. 460, § 2; repealed by Laws, 1986, ch. 495, § 335]; en. Laws, 1986, ch. 495, § 9; Laws, 1991, ch. 440, § 7; Laws, 2000, ch. 430, § 1; Laws, 2006, ch. 574, § 1; Laws, 2012, ch. 471, § 1; Laws, 2017, ch. 441, § 7, eff from and after July 1, 2017.

**Editor's Notes —**

The United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1991, ch. 440, § 7, on May 1, 1992.

On August 11, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 430.

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, § 1.

By letter dated September 6, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 471.

**Amendment Notes —**

The 2017 amendment inserted "county" preceding "registrar" both times it appears; deleted (3), which read: "Every person entitled to vote by absentee shall have all absentee applications processed by the registrar through the Statewide Election Management System. The registrar shall account for all absentee ballots delivered to such voters and received from such voters through the Statewide Election Management System"; and made a gender neutral change.

**Cross References —**

Registering to vote by mail-in application, see § 23-15-47.

Residency of prisoner as affected by incarceration in facility of Department of Corrections, see § 47-1-63.

**Federal Aspects—**

National Voter Registration Act of 1993, see 52 U.S.C.S. § 20501 et seq.

## JUDICIAL DECISIONS

### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-5-31.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-5-31.**

Allegations that because of the interrelationship between the racial restrictions of the Mississippi voter qualification laws and requirements with respect to the selection of grand and petit jurors a defendant would be denied his equal civil rights to trial by a jury free from exclusion were insufficient to justify the removal to the federal courts of the trial of a Negro charged with the crime of rape. Bass v. Mississippi, 381 F.2d 692, 1967 U.S. App. LEXIS 5438 (5th Cir. Miss. 1967).

State election commissioners have power, authority, and responsibility to help administer voter registration laws by formulating rules for the various tests applied to applicants for registration, and for the reason that these rules and tests are vitally important elements of Mississippi laws challenged in an action brought by the United States to end discrimination in voter registration, the commissioners should not have been stricken as parties defendants to the action on the ground that they lacked sufficient interest in administering or enforcing the challenged laws. United States v.

Mississippi, 380 U.S. 128, 85 S. Ct. 808, 13 L. Ed. 2d 717, 1965 U.S. LEXIS 1664 (U.S. 1965).

### OPINIONS OF THE ATTORNEY GENERAL

If precinct is split by supervisor district lines it would also be registrar's duty to make determination, upon registration, of proper supervisor district for each individual residing in precinct; duly appointed deputy registrar may, of course, perform these tasks for registrar. 1990 Miss. Op. Att'y Gen. 201.

### RESEARCH REFERENCES

**Am. Jur.**

9 Am. Jur. Pl & Pr Forms (Rev), Form 21 (petition to compel registration).

**CJS.**

29 C.J.S., Elections § 120–122.

**Law Reviews.**

Mississippi and the Voting Rights Act: 1965-1982. 52 Miss. L. J. 803, December 1982.

## § 23-15-35. Clerk of municipality to be registrar; registration books; form of application for registration; registration of county electors by clerk.

(1) The clerk of the municipality shall be the registrar of voters of the municipality, and shall take the oath of office prescribed by Section 268 of the Constitution. The municipal registration shall conform to the county registration which shall be a part of the official record of registered voters as contained in the Statewide Elections Management System. The municipal clerk shall comply with all the provisions of law regarding the registration of voters, including the use of the voter registration applications used by county registrars and prescribed by the Secretary of State under Sections 23-15-39 and 23-15-47.

(2) The municipal clerk shall be authorized to register applicants as county electors. The municipal clerk shall forward notice of registration, a copy of the application for registration, and any changes to the registration when they occur, either by certified mail to the county registrar or by personal delivery to the county registrar provided that a numbered receipt is signed by the county registrar in return for the described documents. Upon receipt of the copy of the application for registration or changes to the registration, and if a review of the application indicates that the applicant meets all the criteria necessary to qualify as a county elector, then the county registrar shall make a determination of the county voting precinct in which the person making the application shall be required to vote. The county registrar shall send this county voting precinct information by United States first-class mail, postage prepaid, to the person at the address provided on the application. Any mailing costs incurred by the municipal clerk or the county registrar in effectuating this subsection (2) shall be paid by the county board of supervisors. If a review of the copy of the application for registration or changes to the registration indicates that the applicant is not qualified to vote in the county, the county registrar shall challenge the application. The county election commissioners

shall review any challenge or disqualification, after having notified the applicant by certified mail of the challenge or disqualification.

(3) The municipal clerk shall issue to the person making the application a copy of the application and the county registrar shall process the application in accordance with the law regarding the handling of voter registration applications.

(4) The receipt of a copy of the application for registration sent pursuant to Section 23-15-39(3) shall be sufficient to allow the applicant to be registered as an elector in the municipality, provided that such application is not challenged as provided for therein.

(5) The municipal clerk of each municipality shall provide the county registrar in which the municipality is located the information necessary to conform the municipal registration to the county registration which shall be a part of the official record of registered voters as contained in the Statewide Elections Management System. If any changes to the information occur as a result of redistricting, annexation or other reason, it shall be the responsibility of the municipal clerk to timely provide the changes to the county registrar.

**HISTORY:**

Derived from 1972 Code § 21-11-3 [Codes, 1892, § 3029; 1906, § 3434; Hemingway's 1917, § 5994; 1930, § 2596; 1942, § 3374-61; Laws, 1904, ch. 158; Laws, 1950, ch. 491, § 61; Laws, 1984, ch 457, § 3; repealed by Laws, 1986, ch. 495, § 329]; en, Laws, 1986, ch. 495, § 10; Laws, 1988, ch. 350, § 5; Laws, 2004, ch. 305, § 8; Laws, 2006, ch. 574, § 2; Laws, 2007, ch. 565, § 1; Laws, 2008, ch. 532, § 2; brought forward without change, Laws, 2012, ch. 471, § 6; Laws, 2017, ch. 441, § 8, eff from and after July 1, 2017.

**Editor's Notes —**

Laws of 2004, ch. 305, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the "Mississippi Help America Vote Act of 2002 Compliance Law."

On July 12, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2004, ch. 305, § 8.

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, § 2.

On July 16, 2007, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2007, ch. 565.

On August 4, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 532.

By letter dated September 6, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 471.

**Amendment Notes —**

The 2017 amendment, in (2), inserted "county" preceding "registrar" the last time it appears in the second sentence, and inserted "(2)" following "effectuating this subsection" in the fifth sentence; in (5), substituted "county registrar" for "circuit clerk" both times it appears; and made a minor stylistic change.

**Cross References —**

Provision that receipt of an application for registration sent pursuant to this section shall be sufficient to allow the applicant to be registered as an elector of the state, see § 23-15-39.

**Federal Aspects—**

The Help America Vote Act of 2002 is Act of Oct. 29, 2002, P.L. 107-252, formerly appearing as 42 USCS § 15301 et seq., now codified as 52 USCS § 20901 et seq. For full classification of the Act, consult USCS Tables volumes.

RESEARCH REFERENCES

**Am. Jur.**
25 Am. Jur. 2d, Elections §§ 177, 180-183.

**CJS.**
29 C.J.S., Elections §§ 66, 128.

### § 23-15-37. Keeping registration books; registration of voters; voter registration in public schools.

(1) The registrar shall register the electors of his or her county at any time during regular office hours.

(2) The county registrar may keep his or her office open to register voters from 8:00 a.m. until 7:00 p.m., including the noon hour, for the five (5) business days immediately preceding the thirtieth day before any regularly scheduled primary or general election. The county registrar shall also keep his or her office open from 8:00 a.m. until 12:00 noon on the Saturday immediately preceding the thirtieth day before any regularly scheduled primary or general election, unless that Saturday falls on a legal holiday, in which case registration applications submitted on the Monday immediately following the legal holiday shall be accepted and entered in the Statewide Elections Management System for the purpose of enabling such voters to vote in the next primary or general election.

(3) The registrar, or any deputy registrar duly appointed by law, may visit and spend such time as he or she may deem necessary at any location in his or her county, selected by the registrar not less than thirty (30) days before an election, for the purpose of registering voters.

(4) A person who is physically disabled and unable to visit the office of the registrar to register to vote due to such disability may contact the registrar and request that the registrar or the registrar's deputy visit him or her for the purpose of registering such person to vote. The registrar or the registrar's deputy shall visit that person as soon as possible after such request and provide the person with an application for registration, if necessary. The completed application for registration shall be executed in the presence of the registrar or the registrar's deputy.

(5)(a) In the fall and spring of each year the registrar of each county shall furnish all public schools with mail-in voter registration applications. The applications shall be provided in a reasonable time to enable those students who will be eighteen (18) years of age before a general election to be able to vote in the primary and general elections.

(b) Each public school district shall permit access to all public schools of this state for the county registrar or the county registrar's deputy to register persons who are eligible to vote and to provide voter education.

**HISTORY:**
Derived from 1972 Code § 23-5-29 [Codes, 1892, § 3615; 1906, § 4122; Hemingway's 1917, § 6756; 1930, § 6183; 1942, § 3211; Laws, 1894, ch. 51; Laws, 1942, ch. 217; Laws, 1952, ch. 399; Laws, 1955, Ex ch. 103; Laws, 1966, ch. 611, § 1; Laws, 1984, ch. 457, § 5; repealed by Laws, 1986, ch. 495, § 335]; en Laws, 1986, ch. 495, § 11; Laws, 1988, ch. 350, § 2; Laws, 1991, ch. 440, § 5; Laws, 1997, ch.

314, § 1; Laws, 2001, ch. 394, § 1; Laws, 2009, ch. 506, § 1; Laws, 2017, ch. 441, § 9, eff from and after passage (approved Apr. 18, 2017).

**Editor's Notes —**

The United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1991, ch. 440, § 5, on May 1, 1992.

On March 12, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 1997, ch. 314.

On June 13, 2001, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2001, ch. 394.

By letter dated July 28, 2009, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2009, ch. 506, § 1.

**Amendment Notes —**

The 2017 amendment, effective April 18, 2017, deleted "keep his books open at his office and shall" following "registrar shall" in (1); in (2), inserted "county" preceding "registrar" in the first and second sentences, substituted "open to register voters" for "open for registration of voters" in the first sentence, and added "unless that Saturday falls...next primary or general election" at the end of the second sentence; rewrote (5)(b), which read: "Each public school district shall permit access to all public schools of this state for the registrar or his deputy for the purpose of registration of persons eligible to vote and for providing voter education"; and made gender neutral and minor stylistic changes throughout.

**Cross References —**

Registering to vote by mail-in application, see § 23-15-47.

Applicability of this section to county office hours, see § 25-1-99.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Under former Section 23-5-29.

**1. In general.**

Plaintiffs who showed that challenged statutes either impinged upon their protected rights to register to vote or burdened organizational efforts to assist prospective voters in registering had standing to sue to challenge Mississippi's dual registration requirement and prohibition on satellite registration as violative of their rights and all persons similarly situated. Mississippi State Chapter, Operation Push v. Allain, 674 F. Supp. 1245, 1987 U.S. Dist. LEXIS 10925 (N.D. Miss. 1987).

Based on totality of circumstances, proof showed by preponderance of evidence that Mississippi's dual registration requirement and statutory prohibition on removing voter registration books from circuit clerk's office resulted in denial or abridgement of right of black citizens in Mississippi to vote and participate in electorial process. Mississippi State Chapter, Operation Push v. Allain, 674 F. Supp. 1245, 1987 U.S. Dist. LEXIS 10925 (N.D. Miss. 1987).

No legitimate or compelling state interest is served by failure of state to mandate uniform, state-wide method of satellite registration; all circuit clerks should make arrangements to conduct satellite registration at no less than three voting precincts in each of five supervisory districts within their respective counties for at least one full day within 12 months of each election of state wide officials. Mississippi State Chapter, Operation Push v. Allain, 674 F. Supp. 1245, 1987 U.S. Dist. LEXIS 10925 (N.D. Miss. 1987).

Whereas instances of racially polarized voting are pertinent in challenges to electoral processes, voting behavior or practices are not germaine to challenged voter registration procedures or to determination of discriminatory impact of registration practices. Racial appeals in campaigns for elections bear little relevance to state's registration procedures. Mississippi State Chapter, Operation Push v. Allain, 674 F. Supp. 1245, 1987 U.S. Dist. LEXIS 10925 (N.D. Miss. 1987).

**2. Under former Section 23-5-29.**

Provisions in Mississippi Election Code pertaining to registration of voters do not violate § 2 of the Voting Rights Act (42 USCS § 1973(a)) simply because there might be better registration procedures which could be enacted into law. Mississippi State Chapter, Operation Push v. Mabus, 717 F. Supp. 1189, 1989 U.S. Dist. LEXIS 9930 (N.D. Miss. 1989), aff'd, 932 F.2d 400, 1991 U.S. App. LEXIS 10878 (5th Cir. Miss. 1991).

Section 251 of the constitution of 1890 and this section have reference to elections contemplated by the constitution and not to local option elections held under § 1610 of the Code of 1892 (Code 1906, § 1777), and the fact that such an election has been ordered does not interfere with the registration of voters. Bew v. State, 71 Miss. 1, 13 So. 868, 1893 Miss. LEXIS 138 (Miss. 1893).

RESEARCH REFERENCES

**Am. Jur.**
25 Am. Jur. 2d, Elections § 179.

**CJS.**
29 C.J.S., Elections §§ 128, 138–140.

**Law Reviews.**
Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

## § 23-15-39. Form of application for registration; allowances for office supplies; determination on application; notice to applicant; assistance to applicant; voter registration number; fees and costs; forwarding of application.

(1) Applications for registration as electors of this state, which are sworn to and subscribed before the registrar or deputy registrar authorized by law and which are not made by mail, shall be made upon a form established by rule duly adopted by the Secretary of State.

(2) The boards of supervisors shall make proper allowances for office supplies reasonably necessitated by the registration of county electors.

(3) If the applicant indicates on the application that he or she resides within the city limits of a city or town in the county of registration, the county registrar shall process the application for registration or changes to the registration as provided by law.

(4) If the applicant indicates on the application that he or she has previously registered to vote in another county of this state or another state, notice to the voter's previous county of registration in this state shall be provided by the Statewide Elections Management System. If the voter's previous place of registration was in another state, notice shall be provided to the voter's previous state of residence if the Statewide Elections Management System has that capability.

(5) The county registrar shall provide to the person making the application a copy of the application upon which has been written the county voting precinct and municipal voting precinct, if any, in which the person shall vote. Upon entry of the voter registration information into the Statewide Elections Management System, the system shall assign a voter registration number to the person, and the county registrar shall mail the applicant a voter registration card to the mailing address provided on the application.

(6) Any person desiring an application for registration may secure an application from the registrar of the county of which he or she is a resident and may take the application with him or her and secure assistance in completing the application from any person of the applicant's choice. It shall be the duty of all registrars to furnish applications for registration to all persons requesting them, and it shall likewise be the registrar's duty to furnish aid and assistance in the completing of the application when requested by an applicant. The application for registration shall be sworn to and subscribed before

the registrar or deputy registrar at the municipal clerk's office, the county registrar's office or any other location where the applicant is allowed to register to vote. The registrar shall not charge a fee or cost to the applicant for accepting the application or administering the oath or for any other duty imposed by law regarding the registration of electors.

(7) If the person making the application is unable to read or write, for reason of disability or otherwise, he or she shall not be required to personally complete the application in writing and execute the oath. In such cases, the registrar or deputy registrar shall read the application and oath to the person and the person's answers thereto shall be recorded by the registrar or the registrar's deputy. The person shall be registered as an elector if he or she otherwise meets the requirements to be registered as an elector. The registrar shall record the responses of the person and the recorded responses shall be retained permanently by the registrar. The county registrar shall enter the voter registration information into the Statewide Elections Management System and designate the entry as an assisted filing.

(8) The receipt of a copy of the application for registration sent pursuant to Section 23-15-35(2) shall be sufficient to allow the applicant to be registered as an elector of this state, if the application is not challenged.

(9) In any case in which the corporate boundaries of a municipality change, whether by annexation or redistricting, the municipal clerk shall, within ten (10) days after approval of the change in corporate boundaries, provide to the county registrar conforming geographic data that is compatible with the Statewide Elections Management System. The data shall be developed by the municipality's use of a standardized format specified by the Statewide Elections Management System. The county registrar, county election commissioner or other county official, who has completed an annual training seminar sponsored by the Secretary of State pertaining to the implementation of new boundary lines in the Statewide Elections Management System and received certification for that training, shall update the municipal boundary information into the Statewide Elections Management System. The Statewide Elections Management System updates the municipal voter registration records and assigns electors to their municipal voting precincts. The county registrar shall forward to the municipal clerk written notification of the additions and changes, and the municipal clerk shall forward to the affected municipal electors written notification of the additions and changes.

**HISTORY:**

Derived from 1972 Code § 23-5-17 [ (Codes, 1942, § 3209.6; Laws, 1955, Ex ch. 102, § 1; Laws, 1960, ch. 449, § 1; Laws, 1962, ch. 569, § 1; Laws, 1965, Ex Sess, ch. 10, §§ 1-4) and § 23-5-303 (Codes, 1942, § 3203-502; Laws, 1972, ch 490, § 502; Laws, 1975, ch 502, § 1; Laws, 1984, ch. 457, § 1; repealed by Laws, 1986, ch 495, §§ 335, 337]; en Laws, 1986, ch. 495, § 12; Laws, 1988, ch. 350, § 3; Laws, 1991, ch. 440, § 8; Laws, 2000, ch. 592, § 1; Laws, 2001, ch. 308, § 1; Laws, 2004, ch. 305, § 9; Laws, 2006, ch. 574, § 3; Laws, 2017, ch. 441, § 10, eff from and after July 1, 2017.

**Editor's Notes —**

The United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1991, ch. 440, § 8, on May 1, 1992.

On July 28, 2000, the United States Attorney

General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 592.

Laws of 2001, ch. 308, § 1, amended this section to provide that persons who are unable to read or write shall not be required to personally complete the application for registration as a voter, and to authorize the registrar or the registrar's deputy to read the application to the prospective voter and record the prospective voter's responses.

On June 13, 2001, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2001, ch. 308.

Laws of 2004, ch. 305, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the "Mississippi Help America Vote Act of 2002 Compliance Law."

On July 12, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Acts of 1965, as amended and extended, to the amendment of this section by Laws of 2004, ch. 305, § 9.

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, § 3.

**Amendment Notes —**

The 2017 amendment added "and the county registrar…provided on the application" at the end of (5); substituted "The registrar shall not charge a fee or cost to the applicant for accepting" for "No fee or cost shall be charged the applicant by the registrar for accepting" in the next-to-last sentence of (6); substituted "shall read the application and oath to the person and" for "shall read to the person the application and oath and" in (7); rewrote (9), which read: "In any case in which a municipality expands its corporate boundaries by annexation or redistricts all or a part of the municipality, the municipal clerk shall within ten (10) days after the effective date of the annexation or after preclearance of the redistricting plan under Section 5 of the Voting Rights Act of 1965, provide the county registrar with conforming geographic data that is compatible with the Statewide Elections Management System. The data shall be developed by the municipality's use of a standardized format specified by the Statewide Elections Management System. The county registrar shall update the municipal boundary information or redistricting information into the Statewide Elections Management System. The Statewide Elections Management System shall update the voter registration records to include the new municipal electors who have resided within the annexed area for at least thirty (30) days after annexation and assign the electors to the municipal voting precincts. The county registrar shall forward to the municipal clerk written notification of the additions and changes, and the municipal clerk shall forward to the new municipal electors written notification of the additions and changes. The Statewide Elections Management System shall correctly place municipal electors within districts whose boundaries were altered by any redistricting conducted within the municipality and assign such electors to the correct municipal voting precincts"; and made gender neutral and minor stylistic changes.

**Cross References —**

Provision that applications for registration as electors of a municipality shall conform as nearly as practicable to the application form provided for in this section, see § 23-15-35.

Provision that receipt of a copy of an application for registration sent pursuant to this section shall be sufficient to allow the applicant to be registered as an elector in a municipality, see § 23-15-35.

Registering to vote by mail-in application, see § 23-15-47.

**Federal Aspects—**

The Help America Vote Act of 2002 is Act of Oct. 29, 2002, P.L. 107-252, formerly appearing as 42 USCS § 15301 et seq., now codified as 52 USCS § 20901 et seq. For full classification of the Act, consult USCS Tables volumes.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2.-5. [Reserved for future use.]
6. Under former Section 23-5-17.

**1. In general.**

Based on totality of circumstances, proof showed by preponderance of evidence that Mississippi's dual registration requirement and statutory prohibition on removing voter registration books from circuit clerk's office resulted in denial or abridgement of right of black citizens in Mississippi to vote and participate in electorial process. Mississippi State Chapter, Operation Push v. Allain, 674 F. Supp. 1245, 1987 U.S. Dist. LEXIS 10925 (N.D. Miss. 1987).

Plaintiffs who showed that challenged statutes either impinged upon their protected rights to register to vote or burdened organizational efforts to assist prospective voters in registering had standing to sue to challenge Mississippi's dual registration requirement and prohibition on satellite registration as violative of their rights and all persons similarly situated. Mississippi State Chapter, Operation Push v. Allain, 674 F. Supp. 1245, 1987 U.S. Dist. LEXIS 10925 (N.D. Miss. 1987).

Whereas instances of racially polarized voting are pertinent in challenges to electoral processes, voting behavior or practices are not germaine to challenged voter registration procedures or to determination of discriminatory impact of registration practices. Racial appeals in campaigns for elections bear little relevance to state's registration procedures. Mississippi State Chapter, Operation Push v. Allain, 674 F. Supp. 1245, 1987 U.S. Dist. LEXIS 10925 (N.D. Miss. 1987).

**2.-5. [Reserved for future use.]**

**6. Under former Section 23-5-17.**

State election commissioners have power, authority, and responsibility to help administer voter registration laws by formulating rules for the various tests applied to applicants for registration, and for the reason that these rules and tests are vitally important elements of Mississippi laws challenged in an action brought by the United States to end discrimination in voter registration, the commissioners should not have been stricken as parties defendants to the action on the ground that they lacked sufficient interest in administering or enforcing the challenged laws. United States v. Mississippi, 380 U.S. 128, 85 S. Ct. 808, 13 L. Ed. 2d 717, 1965 U.S. LEXIS 1664 (U.S. 1965).

Where the court found that substantially all of the eligible white voters in Walthall County had been registered without being required to submit to any of the onerous tests or requirements imposed by the state statute, the county registrar, in registering Negro applicants, was enjoined not to use as a prerequisite to registration any requirements for qualification which had not theretofore been used with respect to the registration of white applicants. United States v. Mississippi, 339 F.2d 679, 1964 U.S. App. LEXIS 3484 (5th Cir. Miss. 1964).

The county registrar of Panola County was required, in conducting proceedings for the registration of voters, not to use as a prerequisite to registration any requirements for qualification which had not theretofore been used with respect to the registration of white applicants. United States v. Duke, 332 F.2d 759, 1964 U.S. App. LEXIS 5292 (5th Cir. Miss. 1964).

All provisions of Mississippi law which condition the right to vote on the ability to read and write, or contain a "test or device" as defined in Section 4(c) of the Voting Rights Act of 1965 [52 USCS § 10303, formerly codified as 42 USCS § 1973b(c)] have no force or effect during the period of suspension prescribed in said Act. United States v. Mississippi, 256 F. Supp. 344, 1966 U.S. Dist. LEXIS 9894 (S.D. Miss. 1966).

## OPINIONS OF THE ATTORNEY GENERAL

Failure of applicant to give his social security number does not disqualify him to register but requires registrar to assign voter registration number to individual and that number must appear on application. 1990 Miss. Op. Att'y Gen. 222.

Under Miss. Code Section 23-15-39(8), all newly annexed county electors who have resided in annexed area for at least thirty days from effective date of annexation are automatically added to municipal registration books as registered voters of municipality. 1993 Miss. Op. Att'y Gen. 969.

## RESEARCH REFERENCES

**ALR.**

Validity of governmental requirement of oath as applied to voters. 18 A.L.R.2d 268.

**Am. Jur.**

25 Am. Jur. 2d, Elections §§ 180-182.

**CJS.**

29 C.J.S., Elections §§ 105–119, 123.

**Law Reviews.**

Mississippi and the Voting Rights Act: 1965-1982. 52 Miss. L. J. 803, December 1982.

## § 23-15-41. Endorsement of application; completion of registration.

(1) When an applicant to register to vote has completed the application form as prescribed by administrative rule, the county registrar shall enter the

applicant's information into the Statewide Elections Management System where the applicant's status will be marked as "ACTIVE," "PENDING" or "REJECTED," and the applicant shall be entitled to register upon his or her request for registration made in person to the registrar, or deputy registrar if a deputy registrar has been appointed. No person other than the registrar, or a deputy registrar, shall register any applicant.

(2) If an applicant is not qualified to register to vote, then the registrar shall enter the applicant's information into the Statewide Elections Management System and mark the applicant's status as "PENDING" or "REJECTED," with the specific reason or reasons for that status noted. The registrar shall notify the election commission of those applicants rejected.

**HISTORY:**

Derived from 1972 Code § 23-5-33 [Codes, 1942, § 3212.5; Laws, 1962, ch. 571, §§ 1-6; Laws, 1965 Ex Sess, ch. 14, § 1; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 13; Laws, 1991, ch. 440, § 9; Laws, 2006, ch. 574, § 4; Laws, 2017, ch. 441, § 11, eff from and after July 1, 2017.

**Editor's Notes —**

The United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1991, ch. 440, § 9, on May 1, 1992.

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, § 4.

**Amendment Notes —**

The 2017 amendment in (1), in the first sentence, inserted "county" and "applicant's information into the" and substituted "applicant's status will be marked as" for "voter status will be marked"; rewrote (2), which read: "If an applicant is not qualified to register to vote, then the registrar shall enter the Statewide Elections Management System voter record where the voter's status shall be marked 'PENDING' or 'REJECTED', specify the reason or reasons therefor, and notify the election commission of those rejected"; and made gender neutral and minor stylistic changes.

## JUDICIAL DECISIONS

### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-5-33.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-5-33.**

Allegations that because of the interrelationship between the racial restrictions of the Mississippi voter qualification laws and requirements with respect to the selection of grand and petit jurors a defendant would be denied his equal civil rights to trial by a jury free from exclusion were insufficient to justify the removal to the federal courts of the trial of a Negro charged with the crime of rape. Bass v. Mississippi, 381 F.2d 692, 1967 U.S. App. LEXIS 5438 (5th Cir. Miss. 1967).

## RESEARCH REFERENCES

**Law Reviews.**

Mississippi and the Voting Rights Act: 1965-1982. 52 Miss. L. J. 803, December 1982.

## § 23-15-43. Automatic review where person is not approved for registration.

In the event an applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in Sections 23-15-61 through 23-15-79. In addition to the meetings of the election commissioners provided in those sections, the commissioners are required to hold such additional meetings to determine all pending cases of registration on review before the election at which the applicant desires to vote.

It is not the purpose of this section to indicate the decision that should be reached by the election commissioners in certain cases but to define which applicants should receive further examination by providing for an automatic review.

**HISTORY:**

Derived from 1972 Code § 23-5-305 [Codes, 1942, § 3203-503; Laws, 1972, ch. 490, § 503; Laws, 1975, ch. 502, § 2; repealed by Laws, 1986, ch. 495, § 337]; en, Laws, 1986, ch. 495, § 14; Laws, 2017, ch. 441, § 12, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment inserted "an" in the first sentence; substituted "provded in those sections" for "provided under said sections" in the second sentence; and made minor stylistic changes.

### JUDICIAL DECISIONS

#### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-5-305.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-5-305.**

Where evidence established that voter registrar summarily disapproved applications of anyone claiming to reside on the campus of Rust College or Mississippi Industrial College, thereby forcing them to prosecute an appeal to the board of election commissioners, while failing to refer to the board the applications of non-students in accordance with this section, the registrar and his employees were enjoined under 42 USCS § 1971(a)(2)(A) from failing to apply uniform standards to all applicants for registration, including black students attending institutions of higher learning in Marshal County, Mississippi, and from failing to register every student applicant who was denied registration because of the application of a stricter or more stringent standard than that applied to other applicants. Frazier v. Callicutt, 383 F. Supp. 15, 1974 U.S. Dist. LEXIS 6706 (N.D. Miss. 1974).

## § 23-15-45. Notice to person denied registration.

In the event that registration is denied pending automatic review by the county election commissioners, the registrar shall immediately inform the applicant that the registration is denied and advise the applicant of the date, time and place of the next meeting of the county election commissioners, at which time the applicant may present such evidence either in person or in writing as he deems pertinent to the question of residency.

**HISTORY:**

Derived from 1972 Code § 23-5-307 [Codes, 1942, § 3203-504; Laws, 1972, ch. 490, § 504; repealed by Laws, 1986, ch. 495, § 337]; en, Laws, 1986, ch. 495, § 15, eff from and after January 1, 1987.

**Cross References —**

Residency of prisoner as affected by incarceration in facility of Department of Corrections, see § 47-1-63.

## § 23-15-47. Registering to vote by mail-in application.

(1) Any person who is qualified to register to vote in the State of Mississippi may register to vote by mail-in application in the manner prescribed in this section.

(2) The following procedure shall be used in the registration of electors by mail:

(a) Any qualified elector may register to vote by mailing or delivering a completed mail-in application to his or her county registrar at least thirty (30) days before any election; however, if the thirtieth day to register before an election falls on a Sunday or legal holiday, the registration applications submitted on the business day immediately following the Sunday or legal holiday shall be accepted and entered into the Statewide Elections Management System for the purpose of enabling voters to vote in the next election. The postmark date of a mailed application shall be the applicant's date of registration.

(b) Upon receipt of a mail-in application, the county registrar shall stamp the application with the date of receipt, and shall verify the application either by matching the applicant's Mississippi driver's license number through the Mississippi Department of Public Safety or by matching the applicant's social security number through the American Association of Motor Vehicle Administrators. Within fourteen (14) days of receipt of a mail-in registration application, the county registrar shall complete action on the application, including any attempts to notify the applicant of the status of his or her application.

(c) If the county registrar determines that the applicant is qualified and his or her application is legible and complete, the county registrar shall mail the applicant written notification that the application has been approved, specifying the county voting precinct, municipal voting precinct, if any, polling place and supervisor district in which the person shall vote. This written notification of approval containing the specified information shall be the voter's registration card. The registration card shall be provided by the county registrar to the applicant in accordance with Section 23-15-39. Upon entry of the voter registration information into the Statewide Elections Management System, the system shall assign a voter registration number to the applicant. The assigned voter registration number shall be clearly shown on the written notification of approval. In mailing the written notification, the county registrar shall note the following on the envelope: "DO NOT FORWARD". If any registration notification form is returned as undeliverable, the voter's registration shall be void.

(d) A mail-in application shall be rejected for any of the following reasons:

(i) An incomplete portion of the application makes it impossible for the registrar to determine the eligibility of the applicant to register;

(ii) A portion of the application is illegible in the opinion of the county registrar and makes it impossible to determine the eligibility of the applicant to register;

(iii) The county registrar is unable to determine, from the address and information stated on the application, the precinct in which the voter should be assigned or the supervisor district in which he or she is entitled to vote;

(iv) The applicant is not qualified to register to vote pursuant to Section 23-15-11;

(v) The county registrar determines that the applicant is already registered as a qualified elector of the county;

(vi) The county registrar is unable to verify the application pursuant to subsection (2)(b) of this section.

(e) If the mail-in application of a person is subject to rejection for any of the reasons set forth in paragraph (d)(i) through (iii) of this subsection, and it appears to the county registrar that the defect or omission is of such a minor nature and that any necessary additional information may be supplied by the applicant over the telephone or by further correspondence, the county registrar may write or call the applicant at the telephone number or address, or both, provided on the application. If the county registrar is able to contact the applicant by mail or telephone, the county registrar shall attempt to ascertain the necessary information, and if this information is sufficient for the registrar to complete the application, the applicant shall be registered. If the necessary information cannot be obtained by mail or telephone, or is not sufficient to complete the application within fourteen (14) days of receipt, the county registrar shall give the applicant written notice of the rejection and provide the reason for the rejection. The county registrar shall further inform the applicant that he or she has a right to attempt to register by appearing in person or by filing another mail-in application.

(f) If a mail-in application is subject to rejection for the reason stated in paragraph (d) (v) of this subsection and the "present home address" portion of the application is different from the residence address for the applicant found in the Statewide Elections Management System, the mail-in application shall be deemed a written request to update the voter's registration pursuant to Section 23-15-13. The county registrar or the election commissioners shall update the voter's residence address in the Statewide Elections Management System and, if necessary, advise the voter of a change in the location of his or her county or municipal polling place by mailing the voter a new voter registration card.

(3) The instructions and the application form for voter registration by mail shall be in a form established by rule duly adopted by the Secretary of State.

(4)(a) The Secretary of State shall prepare and furnish without charge the necessary forms for application for voter registration by mail to each county registrar, municipal clerk, all public schools, each private school that requests such applications, and all public libraries.

(b) The Secretary of State shall distribute without charge sufficient forms for application for voter registration by mail to the Commissioner of Public Safety, who shall distribute the forms to each driver's license examining and renewal station in the state, and shall ensure that the forms are regularly available to the public at such stations.

(c) Bulk quantities of forms for application for voter registration by mail shall be furnished by the Secretary of State to any person or organization.

The Secretary of State shall charge a person or organization the actual cost he or she incurs in providing bulk quantities of forms for application for voter registration to such person or organization.

(5) The originals of completed mail-in applications shall remain on file in the office of the county registrar with copies retained in the Statewide Elections Management System.

(6) If the applicant indicates on the application that he or she resides within the city limits of a city or town in the county of registration, the county registrar shall enter the information into the Statewide Elections Management System.

(7) If the applicant indicates on the application that he or she has previously registered to vote in another county of this state or another state, notice to the voter's previous county of registration in this state shall be provided through the Statewide Elections Management System. If the voter's previous place of registration was in another state, notice shall be provided to the voter's previous state of residence.

(8) Any person who attempts to register to vote by mail shall be subject to the penalties for false registration provided for in Section 23-15-17.

**HISTORY:**

Laws, 1991, ch. 440, § 1; Laws, 1993, ch. 528, § 3; Laws, 1994, ch. 600, § 1; Laws, 2004, ch. 305, § 10; Laws, 2006, ch. 574, § 5; Laws, 2017, ch. 441, § 13, eff from and after passage (approved Apr. 18, 2017).

**Editor's Notes —**

The United States Attorney General, by letter dated May 1, 1992, interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 1991, ch. 440, § 1, except that the U.S. Attorney General objected to the mail-in voter registration requirement that the witnessing registered voter attest to the facts stated in the mail-in application.

The United States Attorney General, by letter dated August 16, 1993, interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1993, ch. 528, § 3.

The United States Attorney General, by letter dated February 2, 1995, interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 600, § 1, except that the U.S. Attorney General objected to the mail-in voter registration requirement that the witnessing registered voter attest to the facts stated in the mail-in application.

Laws of 2004, ch. 305, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the "Mississippi Help America Vote Act of 2002 Compliance Law."

On July 12, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2004, ch. 305, § 10.

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, § 5.

Laws of 2017, ch. 441, § 205 provides:

"SECTION 205. This act shall take effect and be in force from and after July 1, 2017, except for Sections 3, 9, 13, 14, 15, 18, 19, 21, 24, 31, 70, 108, 115, 116, 117, 118, 119, 184 and 188, which shall take effect and be in force from and after passage [approved April 18, 2017]."

**Amendment Notes —**

The 2017 amendment, effective April 18, 2017, rewrote (2)(a), which read: "Any qualified elector may register to vote by mailing or delivering a completed mail-in application to his county registrar at least thirty (30) days prior to any election. The postmark date of a mailed application shall be the date of registration"; in (2)(b), rewrote the first sentence, which read: "Upon receipt of a mail-in application, the county registrar shall stamp the application with the date of receipt, and shall verify the application by contacting the applicant by telephone, by personal contact with the applicant, or by any other method approved by the Secretary of State," and in the second sentence, substituted "fourteen (14) days" for "twenty-five (25) days" and inserted "registration"; in (2)(c), added "to the applicant in accordance with Section 23-15-39" at the end of the third sentence, and substituted "applicant" for "person" at the end of the fourth sentence; in (2)(d)(v), inserted "county" and "already"; in (2)(e), inserted "county" preceding "registrar" twice in the first sentence, the first time it appears in the second sentence and in the last sentence, and inserted "or address, or both" near the end of the first sentence; in (2)(f), substituted "Statewide Elections Management System" for "registration book" in the first sentence and rewrote the second sentence, which read "Subject to the time limits and other provisions of Section 23-15-13, the registrar or the election commissioners shall note the new residence address on his records and, if necessary, transfer the applicant to his new county precinct or municipal precinct, if any, advise the applicant of his new county precinct or municipal precinct, if any, polling place and supervisor district"; rewrote (5), which read: "The originals of completed mail-in applications shall remain on file in the office of the county registrar in accordance with Section 23-15-113. Nothing in this section shall preclude having applications on microfilm, microfiche or as an electronic image"; deleted the last three sentences of (6), which required the county registrar to send municipal voting precinct information by mail and to notify an applicant if a review of the application for registration indicated the applicant was not qualified to vote; deleted "if the Statewide Elections management System has that capability" from the end of (7); and made gender neutral and minor stylistic changes throughout.

**Cross References —**

Date of registration to vote, see § 23-15-79.

Residency of prisoner as affected by incarceration in facility of Department of Corrections, see § 47-1-63.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

**Federal Aspects—**

The Help America Vote Act of 2002 is Act of Oct. 29, 2002, P.L. 107-252, formerly appearing as 42 USCS § 15301 et seq., now codified as 52 USCS § 20901 et seq. For full classification of the Act, consult USCS Tables volumes.

## § 23-15-49. Change of voter registration information by elector on secured website.

(1)(a) The Secretary of State shall, with the support of the Mississippi Department of Public Safety, establish a secure Internet website to permit registered electors to change their name, address or other information set forth in the elector's existing voter registration record.

(b) Upon the request of an elector through the secure website, the software used by the Secretary of State for processing applications through the website shall provide for verification that:

(i) The elector has a current and valid Mississippi driver's license or photo identification card issued by the Mississippi Department of Public Safety and the number for that driver's license or photo identification card provided by the applicant matches the number for the elector's driver's license or photo identification card that is on file with the Mississippi Department of Public Safety;

(ii) The name and date of birth provided by the voter matches the name and date of birth that is on file with the Mississippi Department of Public Safety; and

(iii) The information provided by the elector matches the information on file with the Mississippi Department of Public Safety.

If any of the information does not match that on file with the Mississippi Department of Public Safety, the changes shall be rejected.

(2) Any person who attempts to change registration information under this section shall be subject to the penalties for false registration provided for in Section 97-13-25.

(3) The Secretary of State and the Department of Public Safety shall enter into a memorandum of understanding providing for the sharing of information required to facilitate the requirements of this section.

**HISTORY:**

Laws, 2016, ch. 416, § 1, eff from and after July 1, 2016.

**Joint Legislative Committee Note —**

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (1)(a) by substituting "change their name" for "change the their name." The Joint Committee ratified the correction at its August 5, 2016, meeting.

## SUBARTICLE C.

## APPEALS UPON DENIAL OF REGISTRATION.

| Sec. | |
|---|---|
| 23-15-61. | Appeal by person denied registration. |
| 23-15-63. | Appeal by other elector of allowance of registration. |
| 23-15-65. | Determination of appeals at September meeting of board of election commissioners. |
| 23-15-67. | Determination of appeals at other meetings. |
| 23-15-69. | Appeals heard de novo; finality of decisions. |
| 23-15-71. | Appeal from decision of commissioners. |
| 23-15-73. | Duty of commissioners upon appeal. |
| 23-15-75. | Proceedings in circuit court. |
| 23-15-77. | Costs. |
| 23-15-79. | Date of registration to vote. |

### § 23-15-61. Appeal by person denied registration.

Any person denied the right to register as a voter may appeal from the decision of the county registrar to the board of election commissioners by filing with the county registrar, on the same day of the denial or within five (5) days after the denial, a written application for appeal.

**HISTORY:**

Derived from 1972 Code § 23-5-55 [Codes, 1892, § 3624; 1906, § 4131; Hemingway's 1917, § 6765; 1930, § 6196; 1942, § 3224; repealed by Laws, 1986, ch. 495, § 333]; en, Laws, 1986, ch. 495, § 16; Laws, 2017, ch. 441, § 14, eff from and after passage (approved Apr. 18, 2017).

**Editor's Notes —**

Laws of 2017, ch. 441, § 205 provides:

"SECTION 205. This act shall take effect and be in force from and after July 1, 2017, except for Sections 3, 9, 13, 14, 15, 18, 19, 21, 24, 31, 70, 108, 115, 116, 117, 118, 119, 184 and 188, which shall take effect and be in force from and after passage [approved April 18, 2017]."

**Amendment Notes —**

The 2017 amendment, effective April 18, 2017, inserted "county" preceding "registrar" twice; substituted "after the denial" for "thereafter"; and made a minor stylistic change.

**Cross References —**

Provision that, in the event an applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in this subarticle, see § 23-15-43.

Residency of prisoner as affected by incarceration in facility of Department of Corrections, see § 47-1-63.

### JUDICIAL DECISIONS

#### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-5-55.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-5-55.**

Plaintiffs were not entitled to maintain a class action for declaratory relief, based on the alleged improper denial of their right to vote by county court clerk and registrar, where they had failed to pursue the reasonable and adequate administrative remedies provided by Mississippi law. Darby v. Daniel, 168 F. Supp. 170, 1958 U.S. Dist. LEXIS 3312 (D. Miss. 1958).

The provision for appeals was pointed out in Darby v. Daniel, 168 F. Supp. 170, 1958 U.S. Dist. LEXIS 3312 (D. Miss. 1958).

Remedy of elector whose name is erased from registration books is to apply for reregistration and, on denial thereof, appeal to board of election commissioners, and if necessary, to circuit court. Calvert v. Crosby, 163 Miss. 177, 139 So. 608, 1932 Miss. LEXIS 25 (Miss. 1932).

### RESEARCH REFERENCES

**Am. Jur.**

25 Am. Jur. 2d, Elections §§ 175, 183-185.

**CJS.**

29 C.J.S., Elections §§ 66, 106, 117, 123.

**Lawyers' Edition.**

Criminal liability, under 18 USCS §§ 241, 242, for depriving, or conspiring to deprive, a person of his civil rights-Supreme Court cases. 20 L. Ed. 2d 1454.

**Law Reviews.**

Mississippi and the Voting Rights Act: 1965-1982. 52 Miss. L. J. 803, December 1982.

Stavis, A century of struggle for black enfranchisement in Mississippi: From the Civil War to the congressional challenge of 1965-and beyond. 57 Miss. L. J. 591, December, 1987.

Rhodes, Enforcing the Voting Rights Act in Mississippi through litigation. 57 Miss. L. J. 705, December, 1987.

## § 23-15-63. Appeal by other elector of allowance of registration.

Any elector of the county may likewise appeal from the decision of the county registrar allowing any other person to be registered as a voter; but before the same can be heard, the party appealing shall give notice to the person whose registration is appealed from, in writing, stating the grounds of the appeal. The notice shall be served by the sheriff or a constable, as process in other courts is required to be served; and the officer may demand and receive for such service, from the person requesting the same, the sum of One Dollar ($1.00).

**HISTORY:**

Derived from 1972 Code § 23-5-57 [Codes, 1892, § 3625; 1906, § 4132; Hemingway's 1917, § 6766; 1930, § 6197; 1942, § 3225; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 17; Laws, 2017, ch. 441, § 15, eff from and after passage (approved Apr. 18, 2017).

**Editor's Notes —**

Laws of 2017, ch. 441, § 205 provides:

"SECTION 205. This act shall take effect and be in force from and after July 1, 2017, except for Sections 3, 9, 13, 14, 15, 18, 19, 21, 24, 31, 70, 108, 115, 116, 117, 118, 119, 184 and 188, which shall take effect and be in force from and after passage [approved April 18, 2017]."

**Amendment Notes —**

The 2017 amendment, effective April 18, 2017, inserted "county" preceding "registrar" in the first sentence; and made a minor stylistic change.

**Cross References —**

Provision that, in the event an applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in this subarticle, see § 23-15-43.

### JUDICIAL DECISIONS

**ANALYSIS**

1.-5. [Reserved for future use.]
6. Under former Section 23-5-57.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-5-57.**
Plaintiffs were not entitled to maintain a class action for declaratory relief, based on the alleged improper denial of their right to vote by county court clerk and registrar, where they had failed to pursue the reasonable and adequate administrative remedies provided by Mississippi law. Darby v. Daniel, 168 F. Supp. 170, 1958 U.S. Dist. LEXIS 3312 (D. Miss. 1958).

The provision for appeals was pointed out. Darby v. Daniel, 168 F. Supp. 170, 1958 U.S. Dist. LEXIS 3312 (D. Miss. 1958).

## § 23-15-65. Determination of appeals at September meeting of board of election commissioners.

The board of election commissioners shall meet at the courthouse of its county on the second Monday in September preceding any general election, and shall remain in session from day to day, so long as business may require. Three (3) election commissioners shall constitute a quorum to do business; but the concurrence of at least three (3) election commissioners shall be necessary in all cases for the rendition of a decision. The election commissioners shall hear and determine all appeals from the decisions of the registrar of their county, allowing or refusing the applications of electors to be registered; and they shall correct illegal or improper registrations, and shall secure the elective franchise, as affected by registration, to those who may be illegally or improperly denied the same.

**HISTORY:**
Derived from 1972 Code § 23-5-59 [Codes, 1892, § 3623; 1906, § 4130; Hemingway's 1917, § 6764; 1930, § 6198; 1942, § 3226; Laws, 1968, ch. 569, § 1; Laws, 1970, ch. 506, § 21; Laws, 1968, ch. 569, § 1; Laws, 1970, ch. 506, § 21; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 18; Laws, 2017, ch. 441, § 16, eff from and after July 1, 2017.

**Amendment Notes —**
The 2017 amendment inserted "election" preceding "commissioners" four times; and substituted "affected" for "effected" near the end.

**Cross References —**
Provision that, in the event an applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in this subarticle, see § 23-15-43.

Provision that, with respect to the determination of appeals from allowance or refusal of applications for registration, the dates provided in § 23-15-153, and former §§ 23-15-155 and 23-15-157 are supplemental to that set forth in § 23-15-65, see § 23-15-67.

### JUDICIAL DECISIONS

**ANALYSIS**

1.-5. [Reserved for future use.]
6. Under former Section 23-5-59.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-5-59.**
The commissioners of election, under this section [Code 1942, § 3226], have the mandatory duty to correct all illegal or improper registrations. United States v. Ramsey, 331 F.2d 824, 1964 U.S. App. LEXIS 6291 (5th Cir. Miss. 1964).

An election commission's determination whether a person is qualified as a candidate is one of fact, and therefore final. Powe v. Forrest County Election Com., 249 Miss. 757, 163 So. 2d 656, 1964 Miss. LEXIS 433 (Miss. 1964).

The decision of a county election commission on appeal from a decision of the county registrar is declared by Code 1942, § 3227 to be final as to all questions of fact, but not as to matters of law. Powe v. Forrest County Election Com., 249 Miss. 757, 163 So. 2d 656, 1964 Miss. LEXIS 433 (Miss. 1964).

Writ of certiorari could not issue against county election commissioners, where it was sought to conduct in circuit court a contest of elections. Board of Supervisors v. Stephenson, 130 So. 684 (Miss.), rev'd, 160 Miss. 372, 134 So. 142, 1931 Miss. LEXIS 182 (Miss. 1930).

Evidence is admissible to show the number of names remaining on the registration books of the county after all proper erasures, in a contest as to whether the removal of a county seat was carried at an election by the requisite majority of all the qualified voters of the county. Board of Supervisors v. Buckley, 85 Miss. 713, 38 So. 104 (Miss. 1904).

### § 23-15-67. Determination of appeals at other meetings.

The election commissioners of each county shall, at the meetings provided for in Sections 23-15-123, 23-15-155 and 23-15-157, hear and determine any appeals which may have been perfected and which are pending on the respective dates provided for in Sections 23-15-123, 23-15-155 and 23-15-157, from the decisions of the registrar of their county allowing or refusing the applications of persons to be registered. The above dates for hearing the appeals are supplemental to the provisions of Section 23-15-65.

**HISTORY:**

Derived from 1972 Code § 23-5-61 [Codes, 1942, § 3226.5; Laws, 1960, ch. 446; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 19; Laws, 2017, ch. 441, § 17, eff from and after July 1, 2017.

**Editor's Notes —**

Sections 23-15-155 and 23-15-157 referred to in this section were repealed by Laws, 1987, ch. 499, § 19, eff from and after July 24, 1987.

**Amendment Notes —**

The 2017 amendment substituted "election commissioners" for "commissioners of election"; and made minor stylistic changes.

**Cross References —**

Provision that, in the event an applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in this subarticle, see § 23-15-43.

### § 23-15-69. Appeals heard de novo; finality of decisions.

All cases on appeal shall be heard by the boards of election commissioners de novo, and oral and documentary evidence may be heard by them; and they are authorized to administer oaths to witnesses before them; and they have power to subpoena witnesses, and to compel their attendance; to send for persons and papers; to require the sheriff and constables to attend them and to execute their process. The decisions of the commissioners in all cases shall be final as to questions of fact, but as to matters of law they may be revised by circuit courts and the Supreme Court. The registrar shall obey the orders of the commissioners in directing a person to be registered, or a name to be stricken from the Statewide Elections Management System.

**HISTORY:**

Derived from 1972 Code § 23-5-63 [Codes, 1892, § 3626; 1906, § 4133; Hemingway's 1917, § 6767; 1930, § 6199; 1942, § 3227; Laws, 1960, ch. 450; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 20; Laws, 2017, ch. 441, § 18, eff from and after passage (approved Apr. 18, 2017).

**Editor's Notes —**

Laws of 2017, ch. 441, § 205 provides:

"SECTION 205. This act shall take effect and be in force from and after July 1, 2017, except for Sections 3, 9, 13, 14, 15, 18, 19, 21, 24, 31, 70, 108, 115, 116, 117, 118, 119, 184 and 188, which shall take effect and be in force from and after passage [approved April 18, 2017]."

**Amendment Notes —**

The 2017 amendment, effective April 18, 2017, substituted "Statewide Elections Management System" for "registration books" at the end.

**Cross References —**

Provision that, in the event an applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in this subarticle, see § 23-15-43.

### JUDICIAL DECISIONS

#### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former law.

**1.-5. [Reserved for future use.]**

**6. Under former law.**

Code 1942, § 3227 permits the election commissioners to determine appeals from decisions made by the county registrar allowing or refusing a citizen the right to be registered as a qualified voter. Thornton v. Wayne County Election Com., 272 So. 2d 298, 1973 Miss. LEXIS 1528 (Miss. 1973).

Code 1942, § 3227 does not give the county election commission authority to hold a hearing and determine whether or not the election was illegal as a result of irregularities. Thornton v. Wayne County Election Com., 272 So. 2d 298, 1973 Miss. LEXIS 1528 (Miss. 1973).

Persons aggrieved by orders of an election commission must exhaust their administrative remedies of appeal as prerequisite to judicial review, except where the commission does not have authority to pass upon the questions raised by the party resorting to judicial relief, or in cases in which an administrative appeal does not afford due process. Powe v. Forrest County Election Com., 249 Miss. 757, 163 So. 2d 656, 1964 Miss. LEXIS 433 (Miss. 1964).

The provision for appeals was pointed out. Darby v. Daniel, 168 F. Supp. 170, 1958 U.S. Dist. LEXIS 3312 (D. Miss. 1958).

Plaintiffs were not entitled to maintain a class action for declaratory relief, based on the alleged improper denial of their right to vote by county court clerk and registrar, where they had failed to pursue the reasonable and adequate administrative remedies provided by Mississippi law. Darby v. Daniel, 168 F. Supp. 170, 1958 U.S. Dist. LEXIS 3312 (D. Miss. 1958).

Writ of certiorari could not issue against county election commissioners, where it was sought to conduct in circuit court a contest of elections. Board of Supervisors v. Stephenson, 130 So. 684 (Miss.), rev'd, 160 Miss. 372, 134 So. 142, 1931 Miss. LEXIS 182 (Miss. 1930).

## § 23-15-71. Appeal from decision of commissioners.

Any elector aggrieved by the decision of the commissioners shall have the right to file a bill of exceptions thereto, to be approved and signed by the commissioners, embodying the evidence in the case and the findings of the commissioners, within two (2) days after the rendition of the decision, and may thereupon appeal to the circuit court upon the execution of a bond, with two (2) or more sufficient sureties to be approved by the commissioners, in the sum of One Hundred Dollars ($100.00), payable to the state, and conditioned to pay all costs in case the appeal shall not be successfully prosecuted; and in case the decision of the commissioners be affirmed, judgment shall be entered on the bond for all costs.

**HISTORY:**

Derived from 1972 Code § 23-5-65 [Codes, 1892, § 3627; 1906, § 4134; Hemingway's 1917, § 6768; 1930, § 6200; 1942, § 3228; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 21, eff from and after January 1, 1987.

**Cross References —**

Provision that, in the event an applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in this subarticle, see § 23-15-43.

### JUDICIAL DECISIONS

**ANALYSIS**

1.-5. [Reserved for future use.]
6. Under former Section 23-5-65.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-5-65.**

There can never exist any reason for a Circuit Court to transfer an appeal from the election commissioners to the Chancery Court. Lippian v. Ros, 253 Miss. 325, 175 So. 2d 138, 1965 Miss. LEXIS 990 (Miss. 1965).

Any elector has the right to appeal from any decision of the commissioners in failing to correct illegal or improper registration. United States v. Ramsey, 331 F.2d 824, 1964 U.S. App. LEXIS 6291 (5th Cir. Miss. 1964).

Plaintiffs were not entitled to maintain a class action for declaratory relief, based on the alleged improper denial of their right to vote by county court clerk and registrar, where they had failed to pursue the reasonable and adequate administrative remedies provided by Mississippi law. Darby v. Daniel, 168 F. Supp. 170, 1958 U.S. Dist. LEXIS 3312 (D. Miss. 1958).

Remedy of elector whose name is erased from registration books is to apply for reregistration and, on denial thereof, appeal to board of election commissioners, and, if necessary, to circuit court. Calvert v. Crosby, 163 Miss. 177, 139 So. 608, 1932 Miss. LEXIS 25 (Miss. 1932).

Writ of certiorari could not issue against county election commissioners, where it was sought to conduct in circuit court a contest of elections. Board of Supervisors v. Stephenson, 130 So. 684 (Miss.), rev'd, 160 Miss. 372, 134 So. 142, 1931 Miss. LEXIS 182 (Miss. 1930).

### RESEARCH REFERENCES

**ALR.**

What constitutes "conviction" within constitutional or statutory provision disenfranchising one convicted of crime. 36 A.L.R.2d 1238.

Exclusion or inclusion of terminal Sunday or holiday in computing time for taking or perfecting appeal from decision of election board. 61 A.L.R.2d 482.

## § 23-15-73. Duty of commissioners upon appeal.

It shall be the duty of the commissioners, in case of appeal from their decision, to return the bill of exceptions and the appeal bond into the circuit court of the county within five (5) days after the filing of the same with them; and the circuit courts shall have jurisdiction to hear and determine such appeals.

**HISTORY:**

Derived from 1972 Code § 23-5-67 [Codes, 1892, § 3628; 1906, § 4135; Hemingway's 1917, § 6769; 1930, § 6201; 1942, § 3229; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 22, eff from and after January 1, 1987.

**Cross References —**

Provision that, in the event an applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in this subarticle, see § 23-15-43.

### JUDICIAL DECISIONS

**ANALYSIS**

1.-5. [Reserved for future use.]
6. Under former Section 23-5-67.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-5-67.**

The provision for appeals was pointed out. Darby v. Daniel, 168 F. Supp. 170, 1958 U.S. Dist. LEXIS 3312 (D. Miss. 1958).

Writ of certiorari could not issue against county election commissioners, where it was sought to conduct in circuit court a contest of elections. Board of Supervisors v. Stephenson, 130 So. 684 (Miss.), rev'd, 160 Miss. 372, 134 So. 142, 1931 Miss. LEXIS 182 (Miss. 1930).

## § 23-15-75. Proceedings in circuit court.

Should the judgment of the circuit court be in favor of the right of an elector to be registered, the court shall so order, and shall, by its judgment, direct the registrar of the county forthwith to register him. Costs shall not, in any case, be adjudged against the county.

**HISTORY:**

Derived from 1972 Code § 23-5-69 [Codes, 1892, § 3629; 1906, § 4136; Hemingway's 1917, § 6770; 1930, § 6202; 1942, § 3230; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 23, eff from and after January 1, 1987.

**Cross References —**

Provision that, in the event an applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in this subarticle, see § 23-15-43.

### JUDICIAL DECISIONS

### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-5-69.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-5-69.**

Any person wrongfully denied the right to register as a voter who appeals to secure that right is entitled to register and his registration will be effective as of the date he made a proper application to register. Lippian v. Ros, 253 Miss. 325, 175 So. 2d 138, 1965 Miss. LEXIS 990 (Miss. 1965).

The provision for appeals was pointed out. Darby v. Daniel, 168 F. Supp. 170, 1958 U.S. Dist. LEXIS 3312 (D. Miss. 1958).

## § 23-15-77. Costs.

The election commissioners shall not award costs in proceedings before them; but circuit courts and the Supreme Court shall allow costs as in other cases.

**HISTORY:**

Derived from 1972 Code § 23-5-71 [Codes, 1892, § 3630; 1906, § 4137; Hemingway's 1917, § 6771; 1930, § 6203; 1942, § 3231; Laws, 1968, ch. 361, § 64; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 24, eff from and after January 1, 1987.

**Cross References —**

Provision that, in the event an applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in this subarticle, see § 23-15-43.

## § 23-15-79. Date of registration to vote.

(1) Unless the application for registration was made pursuant to Section 23-15-47, the date of registration to vote shall be the date the application for registration to vote was initially received by the registrar or, if submitted by mail, the postmark date, regardless of the date on which the county election commission, circuit court or Supreme Court, as the case may be, makes its final determination allowing the registration.

(2) In the case of an application for registration that has been made pursuant to Section 23-15-47, the date of registration to vote shall be the date the complete and legible application form is received by the county registrar, or, if mailed, the postmark date of the complete and legible application.

**HISTORY:**

Derived from 1972 Code § 23-5-309 [Codes, 1942, § 3203-505; Laws, 1972, ch. 490, § 505; repealed by Laws, 1986, ch. 495, § 337]; en, Laws, 1986, ch. 495, § 25; Laws, 1991, ch. 440, § 10; Laws, 2017, ch. 441, § 19, eff from and after passage (approved Apr. 18, 2017).

**Editor's Notes —**

The United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1991, ch. 440, § 10, on May 1, 1992.

Laws of 2017, ch. 441, § 205 provides:

"SECTION 205. This act shall take effect and be in force from and after July 1, 2017, except for Sections 3, 9, 13, 14, 15, 18, 19, 21, 24, 31, 70, 108, 115, 116, 117, 118, 119, 184 and 188, which shall take effect and be in force from and after passage [approved April 18, 2017].

**Amendment Notes —**

The 2017 amendment, effective April 18, 2017, inserted "was initially received by the registrar or, if submitted by mail, the postmark date" in (1); added "or, if mailed, the postmark date of the complete and legible application" in (2); and made minor stylistic changes.

**Cross References —**

Provision that, in the event an applicant is not registered, there shall be an automatic review by the county election commissioners under the procedures provided in this subarticle, see § 23-15-43.

### RESEARCH REFERENCES

**Law Reviews.**

Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

## SUBARTICLE D.

## LIABILITY OF THE REGISTRAR, PENALTIES AND INJUNCTIVE RELIEF.

Sec.
23-15-91. No personal liability for error of judgment.
23-15-93. Penalties.
23-15-95. Injunctive relief.

### § 23-15-91. No personal liability for error of judgment.

The county registrar, while acting within his jurisdiction and under the authority of this chapter, shall not be liable personally for any error of judgment regarding the registration of electors.

**HISTORY:**

Derived from 1972 Code § 23-5-27 [Codes, 1942, § 3210.5; Laws, 1955, Ex ch. 102, § 6; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 26, eff from and after January 1, 1987.

### RESEARCH REFERENCES

**CJS.**

29 C.J.S., Elections § 64.

### § 23-15-93. Penalties.

If any election commissioner or registrar shall refuse or neglect to perform any of the duties imposed upon him or her by this chapter regarding the registration of electors, or shall knowingly permit any person to sign a false affidavit or otherwise knowingly permit any person to violate any provision of this chapter regarding the registration of electors, or shall violate any of the provisions of this chapter regarding the registration of electors, or if any officer taking the affidavits as provided in this chapter regarding registration of electors shall make any false statement in his or her certificate thereto attached, he or she shall be deemed guilty of a crime and shall be punished by a fine not exceeding One Thousand Dollars ($1,000.00) or by imprisonment in the penitentiary not exceeding one (1) year, and shall be removed from office.

**HISTORY:**

Derived from 1972 Code § 23-5-311 [Codes, 1942, § 3203-601; Laws, 1972, ch. 490, § 601; repealed by Laws, 1986, ch. 495, § 337]; en, Laws, 1986, ch. 495, § 27; Laws, 2017, ch. 441, § 173, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment substituted "If any election commissioner or registrar shall" for "If any registrar or commissioner of elections shall"; and made gender neutral changes.

**Cross References —**

Provision that, in addition to the penalties set forth in this section, a person aggrieved by the refusal or neglect of a registrar or election commissioner to perform any duty relative to registration of electors may petition the chancery court for injunctive relief, see § 23-15-95.

**RESEARCH REFERENCES**

**Lawyers' Edition.**

Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L. Ed. 2d 1960.

### § 23-15-95. Injunctive relief.

In addition to the penalties set forth in Section 23-15-93, any applicant aggrieved by any registrar or election commissioner because of their refusal or neglect to perform any of the duties prescribed by this chapter regarding the registration of electors may petition the chancery court of the county of the registrar or election commissioner for an injunction or mandate to enforce the performance of such duties and to secure to that applicant the rights to which he or she may be entitled under the provisions of the sections.

**HISTORY:**

Derived from 1972 Code § 23-5-312 [Laws, 1975, ch. 502, § 3; repealed by Laws, 1986, ch. 495, § 337]; en, Laws, 1986, ch. 495, § 28; Laws, 2017, ch. 441, § 20, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment substitued "election commissioner" for "commissioner of elections" twice; and made gender neutral and minor stylistic changes.

**RESEARCH REFERENCES**

**Am. Jur.**

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 21 (petition for writ of mandamus to compel registration).

**CJS.**

29 C.J.S., Elections § 64.

## SUBARTICLE E.

## REGISTRATION RECORDS.

Sec.

23-15-111. Repealed.
23-15-113. Contents of voter registration files; storage of voter registration records.
23-15-114. Repealed.
23-15-115. Transfer of voter registration necessitated by change in boundaries of legislative districts.
23-15-117. Repealed.
23-15-119. Repealed.
23-15-121. Loss or destruction of electronic voting record.
23-15-123. Confusion of registration books.
23-15-125. Form of pollbooks.
23-15-127. Repealed.
23-15-129. Repealed.
23-15-131. Repealed.
23-15-133. Repealed.
23-15-135. Registrar to keep master voter roll and pollbooks and provide location for accepting applications for Mississippi Voter Identification Cards.
23-15-137. Repealed.
23-15-139 and 23-15-140. Repealed.

### § 23-15-111. Repealed.

Repealed by Laws of 2017, ch. 441, § 189, effective from and after July 1, 2017.

§ 23-15-111. [Derived from 1972 Code § 23-5-23 [Codes, 1942, § 3209.9; Laws, 1955, Ex ch. 102, § 4; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 29, eff from and after January 1, 1987.]

**Editor's Notes —**

Former § 23-15-111 related to making changes to the registration books that were required to be kept in order to continue using them.

### § 23-15-113. Contents of voter registration files; storage of voter registration records.

(1) The voter registration files shall contain copies of the applications for registration completed by electors, which applications shall show the date of registration and signature of elector.

(2) All records pertaining to voter registration shall be stored in an electronic format in the Statewide Elections Management System by the county registrar. The scanned applications shall be a legal document of voter registration and shall be retained in the Statewide Elections Management System.

**HISTORY:**

Derived from 1972 Code § 23-5-25 [Codes, 1892, § 3607; 1906, § 4113; Hemingway's 1917, § 6747; 1930, § 6182; 1942, § 3210; Laws, 1952, ch. 398, § 1; Laws, 1955, Ex Sess, ch. 102, § 5; Laws, 1962, ch. 569, § 3; Laws, 1965, Ex Sess, ch. 12, § 1; Laws, 1984, ch. 457, § 4; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 30; Laws, 1997, ch. 421, § 3; Laws, 2006, ch. 574, § 6; Laws, 2017, ch. 441, § 21, eff from and after passage (approved Apr. 18, 2017).

**Editor's Notes —**

On September 22, 1997, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1997, ch. 421, § 3.

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, § 6.

Laws of 2017, ch. 441, § 205 provides:

"SECTION 205. This act shall take effect and be in force from and after July 1, 2017, except for Sections 3, 9, 13, 14, 15, 18, 19, 21, 24, 31, 70, 108, 115, 116, 117, 118, 119, 184 and 188, which shall take effect and be in force from and after passage [approved April 18, 2017]."

**Amendment Notes —**

The 2017 amendment, effective April 21, 2017, rewrote (1), which read: "The registration books are to be in the following form: The voter registration files shall contain copies of the applications for registration completed by electors, which applications shall show the date of registration and signature of elector, and such files shall be known as registration books. The files described herein may be recorded on microfilm or computer software for convenience and efficiency in storage"; and in the first sentence of (2), deleted "From and after January 1, 2006" from the beginning, and added "by the county registrar" at the end.

**Cross References —**

Registering to vote by mail-in application, see § 23-15-47.

## § 23-15-114. Repealed.

Repealed by Laws, 2006, ch. 574, § 21 effective and in force from and after June 5, 2006, the date it was effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

[Laws, 1991, ch. 440, § 2, eff from and after May 1, 1992 (the date the United States Attorney General interposed no objection to this amendment).]

**Editor's Notes —**

Former § 23-15-114 was entitled: "Automated voter registration system."

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the repeal of this section by Laws, 2006, ch. 574, § 21.

## § 23-15-115. Transfer of voter registration necessitated by change in boundaries of legislative districts.

When a transfer of a voter registration is necessitated by any change in the boundaries of legislative districts, supervisors districts, voting precincts, or other similar boundaries, such information necessary to bring about such transfer may be secured by mail or otherwise. Necessary forms for the purposes of securing necessary information shall be prepared by the registrar.

**HISTORY:**

Derived from 1972 Code § 23-5-32 [Laws, 1978, ch. 393, § 1; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 31, eff from and after January 1, 1987.

## § 23-15-117. Repealed.

Repealed by Laws of 2016, ch. 430, § 22, effective January 1, 2017.

§ 23-15-117. [Derived from 1972 Code § 23-5-45 [Codes, 1880, § 114; 1892, § 3617; 1906, § 4124; Hemingway's 1917, § 6758; 1930, § 6191; 1942, § 3219; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 32, eff from and after January 1, 1987.]

**Editor's Notes —**
Former § 23-15-117 was entitled: Penalty for false entry, and for unauthorized erasure or alteration.

## § 23-15-119. Repealed.

Repealed by Laws of 2017, ch. 441, § 189, effective July 1, 2017.

§ 23-15-119. [Derived from 1972 Code § 23-5-47 [Codes, 1880, § 115; 1892, § 3618; 1906, § 4125; Hemingway's 1917, § 6759; 1930, § 6192; 1942, § 3220; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 33, eff from and after January 1, 1987.]

**Editor's Notes —**
Former § 23-15-119 provided for the procurement of new, or enlargement of existing, registration books or pollbooks.

## § 23-15-121. Loss or destruction of electronic voting record.

Should the electronic voting record of any county as maintained by the Statewide Elections Management System be lost or destroyed, the board of supervisors may adjudge the fact, and direct a new registration of the voters to be made; and the county registrar, being so directed, shall make a new registration, as herein provided, of the qualified electors of his or her county.

**HISTORY:**
Derived from 1972 Code § 23-5-49 [Codes, 1892, § 3619; 1906, § 4126; Hemingway's 1917, § 6760; 1930, § 6193; 1942, § 3221; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 34; Laws, 2006, ch. 574, § 7; Laws, 2017, ch. 441, § 22, eff from and after July 1, 2017.

**Editor's Notes —**
On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, § 7.

**Amendment Notes —**
The 2017 amendment substituted "the electronic voting record of any county as maintained by the Statewide Elections Management System be lost" for "the registration books or electronic voting record of any county be lost"; inserted "county" preceding "registrar"; deleted "on new books to be provided by the board" from the end; and made a gender neutral change.

**Cross References —**
Lost or destroyed pollbook, see § 23-15-131.

## § 23-15-123. Confusion of registration books.

If at any time the registration books of the county as maintained by the Statewide Elections Management System be or become in such confusion that a new registration is necessary to determine correctly the names of the qualified electors and the voting precinct of each, the board of supervisors shall order a new registration of voters to be made in like manner as provided for in Section 23-15-121.

**HISTORY:**

Derived from 1972 Code § 23-5-51 [Codes, 1892, § 3620; 1906, § 4127; Hemingway's 1917, § 6761; 1930, § 6194; 1942, § 3222; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 35; Laws, 2006, ch. 574, § 8; Laws, 2017, ch. 441, § 23, eff from and after July 1, 2017.

**Editor's Notes —**

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, § 8.

**Amendment Notes —**

The 2017 amendment inserted "as maintained by the Statewide Elections management System."

## § 23-15-125. Form of pollbooks.

The pollbook of each voting precinct shall designate the voting precinct for which it is to be used, and shall be ruled in appropriate columns, with printed or written headings, as follows: date of registration; voter registration number; name of electors; date of birth; and a number of blank columns for the dates of elections. All qualified applicants who register with the registrar shall be entered in the Statewide Elections Management System. Only the names of those qualified applicants who register within thirty (30) days before an election shall appear on the pollbooks of the election; however, if the thirtieth day to register before an election falls on a Sunday or legal holiday, the registration applications submitted on the business day immediately following the legal holiday shall be accepted and entered in the Statewide Elections Management System for the purpose of enabling voters to vote in the next election. When county election commissioners determine that any elector is disqualified from voting, by reason of death, conviction of a disenfranchising crime, removal from the jurisdiction, or other legal cause, that fact shall be noted in the Statewide Elections Management System and the voter's name shall be removed from the Statewide Elections Management System, the state's voter roll and the county's pollbooks. Nothing in this section shall preclude the use of electronic pollbooks.

**HISTORY:**

Derived from 1972 Code § 23-5-73 [Codes, 1892, § 3608; 1906, § 4114; Hemingway's 1917, § 6748; 1930, § 6204; 1942, § 3232; Laws, 1962, ch. 574; Laws, 1977, 2d Ex Sess, ch. 24, § 3; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 36; Laws, 2006, ch. 574, § 9; Laws, 2010, ch. 446, § 8; Laws, 2017, ch. 441, § 24, eff from and after passage (approved Apr. 18, 2017).

**Editor's Notes —**

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, § 9.

By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446, § 8.

Laws of 2017, ch. 441, § 205 provides:

"SECTION 205. This act shall take effect and be in force from and after July 1, 2017, except for Sections 3, 9, 13, 14, 15, 18, 19, 21, 24, 31, 70, 108, 115, 116, 117, 118, 119, 184 and 188, which shall take effect and be in force from and after passage [approved April 18, 2017]."

**Amendment Notes —**

The 2017 amendment, effective April 18, 2017, rewrote the section, which read: "The pollbook of each voting precinct shall designate the voting precinct for which it is to be used, and shall be ruled in appropriate columns, with printed or written headings, as follows: date of registration; voter registration number; name of electors; date of birth; and a number of blank columns for the dates of elections. Except as otherwise provided in Section 23-15-692, all who register within thirty (30) days before any regular election shall be entered on the pollbooks immediately after such election, and not before, so that the pollbooks will show only the names of those qualified to vote at such election. When election commissioners determine that any elector is disqualified from voting, by reason of removal from the supervisors district, or other cause, that fact shall be noted on the registration book and his name shall be erased from the pollbook. Nothing in this section shall preclude the use of electronic pollbooks."

**Cross References —**

Registering to vote by mail-in application, see § 23-15-47.

### § 23-15-127. Repealed.

Repealed by Laws of 2017, ch. 441, § 189, effective July 1, 2017.

§ 23-15-127. [Derived from 1942 Code § 3112 [Laws, 1934, ch. 308; repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; en, Laws, 1986, ch. 495, § 37; Laws, 2006, ch. 574, § 10, eff June 5, 2006 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)]

**Editor's Notes —**

Former § 23-15-127 related to the preparation, use and revision of primary election pollbooks.

### § 23-15-129. Repealed.

Repealed by Laws of 2017, ch. 441, § 189, effective July 1, 2017.

§ 23-15-129. [Derived from 1972 Code § 23-5-74 [Laws, 1977, 2d Ex Sess, ch. 24, § 1; repealed by Laws, 1986, ch. 495, § 331]; en, Laws, 1986, ch. 495, § 38; Laws, 2006, ch. 574, § 11, eff June 5, 2006 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)]

**Editor's Notes —**

Former § 23-15-129 related to the administrative division of pollbooks to form subprecincts.

### § 23-15-131. Repealed.

Repealed by Laws, 2006, ch. 574, § 21 effective and in force from and after June 5, 2006, the date it was effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

[Derived from 1972 Code § 23-5-75 [Codes, 1892, § 3621; Laws, 1906, § 4128; Hemingway's 1917, § 6762; Laws, 1930, § 6205; Laws, 1942, § 3233; Laws, 1977 2d Ex Sess, ch. 24, § 4; repealed by Laws, 1986, ch. 495, § 331]; en, Laws, 1986, ch. 495, § 39, eff from and after January 1, 1987.]

**Editor's Notes —**

Former § 23-15-131 was entitled: "Loss or destruction of pollbook."

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the repeal of this section by Laws of 2006, ch. 574, § 21.

### § 23-15-133. Repealed.

Repealed by Laws of 2017, ch. 441, § 189, effective July 1, 2017.

§ 23-15-133. [Derived from 1972 Code § 23-5-76 [Laws, 1977, 2d Ex Sess, ch. 24, § 2; repealed by Laws, 1986, ch. 495, § 331]; en, Laws, 1986, ch. 495, § 40, eff from and after January 1, 1987.]

**Editor's Notes —**

Former § 23-15-133 provided the procedure for forming subprecincts and making subprecinct pollbooks.

## § 23-15-135. Registrar to keep master voter roll and pollbooks and provide location for accepting applications for Mississippi Voter Identification Cards.

(1) The master voter roll as electronically maintained by the Statewide Elections Management System of the several voting precincts of each county and the pollbooks heretofore in use shall be delivered to the registrar of the county, and they, together with the master voter roll and pollbooks hereafter made, shall be records of his or her office, and he or she shall carefully preserve the same as such; and after each election the pollbooks shall be speedily returned to the office of the registrar.

(2) The registrar of each county shall provide a location in the registrar's office at which he or she shall accept applications for Mississippi Voter Identification Cards in accordance with the Mississippi Constitution.

(3) The registrar of each county shall enter into a Memorandum of Understanding, which is negotiated by the Secretary of State, with the Mississippi Department of Public Safety for the purpose of providing a Mississippi Voter Identification Card.

**HISTORY:**

Derived from 1972 Code § 23-5-77 [Codes, 1892, § 3610; 1906, § 4116; Hemingway's 1917, § 6750; 1930, § 6206; 1942, § 3234; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 41; Laws, 2012, ch. 526, § 3; Laws, 2017, ch. 441, § 25, eff from and after July 1, 2017.

**Editor's Notes —**

The effective date of the bill that amended this section, Chapter 526, Laws of 2012 (House Bill No. 921), is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bill was submitted to the United States Attorney General under Section 5, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. Chapter 526 was submitted to the United States Attorney General before the *Shelby County* decision was rendered. In a letter dated August 5, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 526 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 526, so Chapter 526 became effective on the date of the response letter from the United States Attorney General, August 5, 2013.

**Amendment Notes —**

The 2017 amendment, in (1), substituted "master voter roll" for "registration books" both times it appears, inserted "as electronically maintained by the Statewide Elections Management System," and made gender neutral changes.

**Cross References —**

Residency of prisoner as affected by incarceration in facility of Department of Corrections, see § 47-1-63.

OPINIONS OF THE ATTORNEY GENERAL

The Registrar would be the appropriate official to transfer the names of registered voters to a newly established automated voter registration system. 1992 Miss. Op. Att'y Gen. 957.

There is no apparent legal authority that would allow registration books and pollbooks to be kept and maintained in place other than office of circuit clerk/registrar except when pollbooks are being used in conduct of election. 1992 Miss. Op. Att'y Gen. 931.

County registrar is "certifying official" for purpose of certifying number of signatures of qualified electors on petitions calling for election pursuant to particular statute as well as on nominating petitions for candidates for public offices. 1993 Miss. Op. Att'y Gen. 644.

Any and all requests for access to or copies of county voter registration records must be made to the county registrar, and it is the duty and responsibility of the county registrar to insure that voters' social security numbers, telephone numbers, and dates of birth and age information are excluded prior to granting access or providing copies of such records. 2000 Miss. Op. Att'y Gen. 112.

The practice of boards of supervisors to seek certification from their respective county circuit clerks as to the number of signatures of qualified electors appearing on such petitions prior to the adjudication of the sufficiency of those petitions is, in most if not all cases, necessary to protect the integrity of the process, since circuit clerks are the custodians of the registration records. 2000 Miss. Op. Att'y Gen. 216.

Each circuit clerk is responsible for making available public records of his office when properly requested. Information such as social security numbers, telephone numbers, dates of birth and age information must be erased or removed from such records before they are made available to the public. There is no specific statutory direction on the manner in which such information is to be removed. 2003 Miss. Op. Att'y Gen. 555.

Each county registrar must use sound discretion in determining whether the chairman of the election commission should be the only one other than the registrar to have a key to the room where voter registration records are stored. Reasonable hours of access to the room would be established by the circuit clerk, in his or her discretion. 2005 Miss. Op. Att'y Gen. 378.

## § 23-15-137. Repealed.

Repealed by Laws of 2017, ch. 441, § 189, effective July 1, 2017.

§ 23-15-137. [Laws, 1994, ch. 590, § 1; Laws, 2004, ch. 305, § 11; Laws, 2006, ch. 574, § 12; Laws, 2006, ch. 585, § 1, eff from and after June 5, 2006 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2006, ch. 574, § 12).]

**Editor's Notes —**

Former § 23-15-137 authorized municipalities to contract with county election commissioners to revise registration books and pollbooks.

This section was amended by Section 12 of Chapter 574, Laws of 2006, and Section 1 of Chapter 585, Laws of 2006. Both chapters required submission to the United States Attorney General for preclearance under Section 5 of the Voting Rights Act of 1965. Chapter 574 received preclearance on June 5, 2006. There are no records indicating that Chapter 585 was submitted to or precleared by the U.S. Attorney General, so Chapter 585 was never given effect. The version of the section that appeared in the Code, and that was repealed by Section 189 of Chapter 441, Laws of 2017, reflected the language of Section 12 of Chapter 574, Laws of 2006, effective June 5, 2006.

## §§ 23-15-139 and 23-15-140. Repealed.

Repealed by Laws, 2002, ch 588, § 4, eff from and after July 29, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the repeal of this section).

§ 23-15-139. [Laws, 1997, ch. 421, § 1.]

§ 23-15-140. [Laws, 1997, ch. 421, § 2.]

**Editor's Notes —**

Former § 23-15-139 provided for a statewide voter registration record. For present similar provisions, see §§ 23-15-163 et seq.

Former § 23-15-140 provided for a statewide voter registration record. For present similar provisions, see §§ 23-15-163 et seq.

## SUBARTICLE F.

## PURGING.

Sec.

| | |
|---|---|
| 23-15-151. | List of persons convicted of certain crimes to be kept by circuit clerk and entered into Statewide Elections Management System; removal of disenfranchised voters from system. |
| 23-15-153. | Revision of county voter roll by election commissioners; removal of voters from roll; amount and limitations of per diem payments to election commissioners; distribution of master voter roll to municipal registrars; certification of hours worked; number of days in calendar year for which election commissioners entitled to receive compensation. |
| 23-15-155 and 23-15-157. | Repealed. |
| 23-15-159. | Repealed. |
| 23-15-160. | Repealed. |
| 23-15-161. | Attendance and assistance of county registrar at meeting of county election commissioners. |

### § 23-15-151. List of persons convicted of certain crimes to be kept by circuit clerk and entered into Statewide Elections Management System; removal of disenfranchised voters from system.

The circuit clerk of each county is authorized and directed to prepare and keep in his or her office a full and complete list, in alphabetical order, of persons convicted of voter fraud or of any crime listed in Section 241, Mississippi Constitution of 1890. A certified copy of any enrollment by one clerk to another will be sufficient authority for the enrollment of the name, or names, in another county. A list of persons convicted of voter fraud, any crime listed in Section 241, Mississippi Constitution of 1890, or any crime interpreted as disenfranchising in later Attorney General opinions, shall also be entered into the Statewide Elections Management System on a quarterly basis. Voters who have been convicted in a Mississippi state court of any disenfranchising crime are not qualified electors as defined by Section 23-15-11 and shall be purged or otherwise removed by the county registrar or county election commissioners from the Statewide Elections Management System.

**HISTORY:**

Derived from 1972 Code § 23-5-37 [Codes, 1906, §§ 879, 4121; Hemingway's 1917, §§ 4037, 6755; 1930, §§ 4079, 6187; 1942, §§ 3215, 7920; Laws, 1898, ch. 62; Laws, 1908, ch. 109; repealed by Laws, 1986, ch. 495, § 331]; en, Laws, 1986, ch. 495, § 42; Laws, 1987, ch. 499, § 1; Laws, 2012, ch. 517, § 3; Laws, 2017, ch. 441, § 26, eff from and after July 1, 2017.

**Editor's Notes —**

Laws of 1987, ch. 499, § 20, provides as follows:

"SECTION 20. If any section, paragraph, sentence, clause or phrase of this act is declared to be unconstitutional or void, or for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses or phrases shall be in no manner affected thereby but shall remain in full force and effect."

By letter dated November 26, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 517.

**Amendment Notes —**

The 2017 amendment, in the fist sentence, substituted "voter fraud" for "vote fraud"; deleted the former second through fourth sentences, which read: "The clerk shall enter the names of all persons who have been or shall be hereafter convicted of vote fraud or of any crime listed in Section 241, Mississippi Constitution of 1890, in a book prepared and kept for that purpose. The board of supervisors of each county shall, as early as practicable, furnish the circuit clerk of their county with a suitable book for the enrollment of those names showing the name, date of birth, address, court, crime and date of conviction. The roll, when so prepared, shall be compared with the registration book before each election commissioner of the county"; added the last two sentences; and made a gender neutral change.

**Federal Aspects—**

As to provisions of the United States Internal Revenue Code, see Title 26 of the United States Code Service.

## JUDICIAL DECISIONS

### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-5-37.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-5-37.**

A new trial would be required on a felon's claim that the election board's disenfranchisement of him pursuant to §§ 23-5-35, 23-5-37 [Repealed.] was unconstitutionally selective, where the board had not acted according to the requisite procedure established in § 23-5-37 [Repealed.], and its noncompliance with this procedure may have created a pattern of selective enforcement. Williams v. Taylor, 677 F.2d 510, 1982 U.S. App. LEXIS 18677 (5th Cir. Miss. 1982).

## OPINIONS OF THE ATTORNEY GENERAL

The compilation required by this section should include the names of persons who have been convicted of any of the crimes identified as disqualifying by the courts or by official opinions of the Attorney General. 2003 Miss. Op. Att'y Gen. 555.

Where no roll of persons convicted of crimes was maintained by previous clerks, a newly appointed clerk should make reasonable attempts to list persons known to have previous convictions. 2003 Miss. Op. Att'y Gen. 555.

This section requires the circuit clerk of each county to prepare and maintain a list of all persons who have been convicted of disqualifying crimes in their respective counties. However, any documentation received from a circuit clerk of another county, the State of Mississippi or any other source showing that a resident of a particular county has a disqualifying conviction should be recorded in such compilation or preserved in some other manner in order to insure that the name of the person convicted does not appear on the registration records. 2003 Miss. Op. Att'y Gen. 555.

## § 23-15-153. Revision of county voter roll by election commissioners; removal of voters from roll; amount and limitations of per diem payments to election commissioners; distribution of master voter roll to municipal registrars; certification of hours worked; number of days in calendar year for which election commissioners entitled to receive compensation.

(1) At least during the following times, the election commissioners shall

meet at the office of the registrar or the office of the election commissioners to carefully revise the county voter roll as electronically maintained by the Statewide Elections Management System and remove from the roll the names of all voters who have requested to be purged from the voter roll, died, received an adjudication of non compos mentis, been convicted of a disenfranchising crime, or otherwise become disqualified as electors for any cause, and shall register the names of all persons who have duly applied to be registered but have been illegally denied registration:

(a) On the Tuesday after the second Monday in January 1987 and every following year;

(b) On the first Tuesday in the month immediately preceding the first primary election for members of Congress in the years when members of Congress are elected;

(c) On the first Monday in the month immediately preceding the first primary election for state, state district legislative, county and county district offices in the years in which those offices are elected; and

(d) On the second Monday of September preceding the general election or regular special election day in years in which a general election is not conducted.

Except for the names of those voters who are duly qualified to vote in the election, no name shall be permitted to remain in the Statewide Elections Management System; however, no name shall be purged from the Statewide Elections Management System based on a change in the residence of an elector except in accordance with procedures provided for by the National Voter Registration Act of 1993. Except as otherwise provided by Section 23-15-573, no person shall vote at any election whose name is not in the county voter roll electronically maintained by the Statewide Elections Management System.

(2) Except as provided in this section, and subject to the following annual limitations, the election commissioners shall be entitled to receive a per diem in the amount of One Hundred Dollars ($100.00), to be paid from the county general fund, for every day or period of no less than five (5) hours accumulated over two (2) or more days actually employed in the performance of their duties in the conduct of an election or actually employed in the performance of their duties for the necessary time spent in the revision of the county voter roll as electronically maintained by the Statewide Elections Management System as required in subsection (1) of this section:

(a) In counties having less than fifteen thousand (15,000) residents according to the latest federal decennial census, not more than fifty (50) days per year, with no more than fifteen (15) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

(b) In counties having fifteen thousand (15,000) residents according to the latest federal decennial census but less than thirty thousand (30,000) residents according to the latest federal decennial census, not more than seventy-five (75) days per year, with no more than twenty-five (25) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

(c) In counties having thirty thousand (30,000) residents according to the latest federal decennial census but less than seventy thousand (70,000) residents according to the latest federal decennial census, not more than one hundred (100) days per year, with no more than thirty-five (35) additional days allowed for the conduct of each election in excess of one (l) occurring in any calendar year;

(d) In counties having seventy thousand (70,000) residents according to the latest federal decennial census but less than ninety thousand (90,000) residents according to the latest federal decennial census, not more than one hundred twenty-five (125) days per year, with no more than forty-five (45) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

(e) In counties having ninety thousand (90,000) residents according to the latest federal decennial census but less than one hundred seventy thousand (170,000) residents according to the latest federal decennial census, not more than one hundred fifty (150) days per year, with no more than fifty-five (55) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

(f) In counties having one hundred seventy thousand (170,000) residents according to the latest federal decennial census but less than two hundred thousand (200,000) residents according to the latest federal decennial census, not more than one hundred seventy-five (175) days per year, with no more than sixty-five (65) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

(g) In counties having two hundred thousand (200,000) residents according to the latest federal decennial census but less than two hundred twenty-five thousand (225,000) residents according to the latest federal decennial census, not more than one hundred ninety (190) days per year, with no more than seventy-five (75) additional days allowed for the conduct of each election in excess of one (l) occurring in any calendar year;

(h) In counties having two hundred twenty-five thousand (225,000) residents according to the latest federal decennial census but less than two hundred fifty thousand (250,000) residents according to the latest federal decennial census, not more than two hundred fifteen (215) days per year, with no more than eighty-five (85) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

(i) In counties having two hundred fifty thousand (250,000) residents according to the latest federal decennial census but less than two hundred seventy-five thousand (275,000) residents according to the latest federal decennial census, not more than two hundred thirty (230) days per year, with no more than ninety-five (95) additional days allowed for the conduct of each election in excess of one (1) occurring in any calendar year;

(j) In counties having two hundred seventy-five thousand (275,000) residents according to the latest federal decennial census or more, not more than two hundred forty (240) days per year, with no more than one hundred five (105) additional days allowed for the conduct of each election in excess of one (l) occurring in any calendar year.

(3) In addition to the number of days authorized in subsection (2) of this section, the board of supervisors of a county may authorize, in its discretion, the election commissioners to receive a per diem in the amount provided for in subsection (2) of this section, to be paid from the county general fund, for every day or period of no less than five (5) hours accumulated over two (2) or more days actually employed in the performance of their duties in the conduct of an election or actually employed in the performance of their duties for the necessary time spent in the revision of the county voter roll as electronically maintained by the Statewide Elections Management System as required in subsection (1) of this section, for not to exceed five (5) days.

(4)(a) The election commissioners shall be entitled to receive a per diem in the amount of One Hundred Dollars ($100.00), to be paid from the county general fund, not to exceed ten (10) days for every day or period of no less than five (5) hours accumulated over two (2) or more days actually employed in the performance of their duties for the necessary time spent in the revision of the county voter roll as electronically maintained by the Statewide Elections Management System before any special election. For purposes of this paragraph, the regular special election day shall not be considered a special election. The annual limitations set forth in subsection (2) of this section shall not apply to this paragraph.

(b) The election commissioners shall be entitled to receive a per diem in the amount of One Hundred Fifty Dollars ($150.00), to be paid from the county general fund, for the performance of their duties on the day of any general or special election. The annual limitations set forth in subsection (2) of this section shall apply to this paragraph.

(5) The election commissioners shall be entitled to receive a per diem in the amount of One Hundred Dollars ($100.00), to be paid from the county general fund, not to exceed fourteen (14) days for every day or period of no less than five (5) hours accumulated over two (2) or more days actually employed in the performance of their duties for the necessary time spent in the revision of the county voter roll as electronically maintained by the Statewide Elections Management System and in the conduct of a runoff election following either a general or special election.

(6) The election commissioners shall be entitled to receive only one (1) per diem payment for those days when the election commissioners discharge more than one (1) duty or responsibility on the same day.

(7) In preparation for a municipal primary, runoff, general or special election, the county registrar shall generate and distribute the master voter roll and pollbooks from the Statewide Elections Management System for the municipality located within the county. The municipality shall pay the county registrar for the actual cost of preparing and printing the municipal master voter roll pollbooks. A municipality may secure "read only" access to the Statewide Elections Management System and print its own pollbooks using this information.

(8) County election commissioners who perform the duties of an executive committee with regard to the conduct of a primary election under a written agreement authorized by law to be entered into with an executive committee shall receive per diem as provided for in subsection (2) of this section. The days that county election commissioners are employed in the conduct of a primary election shall be treated the same as days county election commissioners are employed in the conduct of other elections.

(9) In addition to any per diem authorized by this section, any election commissioner shall be entitled to the mileage reimbursement rate allowable to federal employees for the use of a privately owned vehicle while on official travel on election day.

(10) Every election commissioner shall sign personally a certification setting forth the number of hours actually worked in the performance of the commissioner's official duties and for which the commissioner seeks compensation. The certification must be on a form as prescribed in this subsection. The commissioner's signature is, as a matter of law, made under the commissioner's oath of office and under penalties of perjury.

The certification form shall be as follows:

## COUNTY ELECTION COMMISSIONER

## PER DIEM CLAIM FORM

NAME: ______________________ COUNTY: ____________________

ADDRESS: ____________________ DISTRICT: __________________

CITY: ____________ ZIP: _______

| DATE WORKED | BEGINNING TIME | ENDING TIME | PURPOSE OF WORK | APPLICABLE MS CODE SECTION | ACTUAL HOURS WORKED | PER DIEM DAYS EARNED |
|---|---|---|---|---|---|---|
| | | | | | | |
| | | | | | | |
| | | | | | | |

| | |
|---|---|
| TOTAL NUMBER OF PER DIEM DAYS EARNED EXCLUDING ELECTION DAYS | __________ |
| PER DIEM RATE PER DAY EARNED | x $100.00 |
| TOTAL NUMBER PER DIEM DAYS EARNED FOR ELECTION DAYS | __________ |
| PER DIEM RATE PER DAY EARNED | x $150.00 |
| TOTAL AMOUNT OF PER DIEM CLAIMED | $__________ |

I understand that I am signing this document under my oath as an election commissioner and under penalties of perjury.

I understand that I am requesting payment from taxpayer funds and that I have an obligation to be specific and truthful as to the amount of hours worked and the compensation I am requesting.

Signed this the ____day of ________, ____,

________________________________

Commissioner's Signature

When properly completed and signed, the certification must be filed with the clerk of the county board of supervisors before any payment may be made. The certification will be a public record available for inspection and reproduction immediately upon the oral or written request of any person.

Any person may contest the accuracy of the certification in any respect by notifying the chair of the commission, any member of the board of supervisors or the clerk of the board of supervisors of the contest at any time before or after payment is made. If the contest is made before payment is made, no payment shall be made as to the contested certificate until the contest is finally disposed of. The person filing the contest shall be entitled to a full hearing, and the clerk of the board of supervisors shall issue subpoenas upon request of the contestor compelling the attendance of witnesses and production of documents and things. The contestor shall have the right to appeal de novo to the circuit court of the involved county, which appeal must be perfected within thirty (30) days from a final decision of the commission, the clerk of the board of supervisors or the board of supervisors, as the case may be.

Any contestor who successfully contests any certification will be awarded all expenses incident to his or her contest, together with reasonable attorney's fees, which will be awarded upon petition to the chancery court of the involved county upon final disposition of the contest before the election commission, board of supervisors, clerk of the board of supervisors, or, in case of an appeal, final disposition by the court. The commissioner against whom the contest is decided shall be liable for the payment of the expenses and attorney's fees, and the county shall be jointly and severally liable for same.

(11) Any election commissioner who has not received a certificate issued by the Secretary of State pursuant to Section 23-15-211 indicating that the election commissioner has received the required elections seminar instruction and that the election commissioner is fully qualified to conduct an election, shall not receive any compensation authorized by this section or Section 23-15-239.

**HISTORY:**

Derived from 1972 Code § 23-5-79 [Codes, 1880, § 124; 1892, § 3635; 1906, § 4142; Hemingway's 1917, § 6776; 1930, § 6211; 1942, § 3239; Laws, 1968, ch. 570, § 1; Laws, 1970, ch. 506, § 24; Laws, 1979, ch. 487, § 1; Laws, 1983, ch. 423, §§ 1, 4; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 43; Laws, 1987, ch. 499, § 15; Laws, 1988, ch. 389, § 1; Laws, 1993, ch. 510, § 1; Laws, 1994, ch. 590, § 2; Laws, 2000, ch. 430, § 4; Laws, 2001, ch. 414, § 1; Laws, 2002, ch. 444, § 1; Laws, 2004, ch. 305, § 12; Laws, 2006, ch. 592, § 2; Laws, 2007, ch. 434, § 4; Laws, 2010, ch. 377, § 1; Laws, 2013, ch. 413, § 1; Laws, 2013, ch. 456, § 1; Laws, 2016, ch. 381, § 1; Laws, 2017, ch. 441, § 27, eff from and after July 1, 2017; Laws, 2018, ch. 399, § 2, eff from and after July 1, 2018.

**Joint Legislative Committee Note —**

This section was amended by Section 1 of Chapter 413, Laws of 2013, approved March 20, 2013, and effective from and after July 9, 2013 (the date of the United States Attorney General's response to the submission of this section under Section 5 of the Voting Rights Act of 1965, as amended and extended). This section was also amended by Section 1 of Chapter 456, Laws of 2013, approved March 25, 2013, and effective from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended. Section 1-1-109 gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments, contingent upon preclearance, as consistent with the legislative intent at the August 1, 2013, meeting of the Committee.

**Editor's Notes —**

The United States Attorney General, by letter dated May 14, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1993, ch. 510, § 1.

The United States Attorney General, by letter dated July 11, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 590, § 2.

On August 11, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 430.

The United States Attorney General, by letter dated June 20, 2001, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2001, ch. 414.

Laws of 2004, ch. 305, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the "Mississippi Help America Vote Act of 2002 Compliance Law."

On July 12, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2004, ch. 305, § 12.

On June 29, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 592, § 2.

On June 15, 2007, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2007, ch. 434.

By letter dated June 21, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 377, § 1.

This section was amended by two bills in 2013. The effective date of each of the two bills that amended this section, Chapter 413, Laws of 2013 (Senate Bill No. 2238) and Chapter 456, Laws of 2013 (Senate Bill No. 2311), is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bills were approved, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. Chapter 413 was submitted to the United States Attorney General before the *Shelby County* decision was rendered. In a letter dated July 9, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 413 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 413, so Chapter 413 became effective on the date of the response letter from the United States Attorney General, July 9, 2013.

Chapter 456 was not submitted before the *Shelby County* decision, but the Mississippi Attorney General's Office submitted Chapter 456 to the United States Attorney General in order to technically meet the requirements of Section 5 and fulfill the condition in the effective date of the bill, which will allow the bill to take effect.

By letter dated July 18, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 456 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 456, so Chapter 456 became effective from and after July 18, 2013, the date of the United States Attorney General's response letter. The Joint Committee on Compilation, Revision and Publication of Legislation, in its meeting on August 1, 2013, voted to integrate the amendments to this section by Chapter 413 and Chapter 456.

**Amendment Notes —**

The 2017 amendment inserted "election" preceding "commissioners" throughout; rewrote the introductory paragraph of (1), which read: "At the following times, the commissioners of election shall meet at the office of the registrar and carefully revise the registration books and the pollbooks of the several voting precincts, and shall erase from those books the names of all persons erroneously on the books, or who have died, removed or become disqualified as electors from any cause; and shall register the names of all persons who have duly applied to be registered and have been illegally denied registration"; substituted "members of Congress" for congressmen" twice in (1)(b); rewrote the last paragraph of (1), which read: "Except for the names of those persons who are duly qualified to vote in the election, no name shall be permitted to remain on the registration books and pollbooks; however, no name shall be erased from the registration books or pollbooks based on a change in the residence of an elector except in accordance with procedures provided for by the National Voter Registration Act of 1993 that are in effect at the time of such erasure. Except as otherwise provided by Section 23-15-573, no person shall vote at any election whose name is not on the pollbook"; substituted "county voter roll as electronically maintained by the Statewide Elections Management System" for "registration books and pollbooks" in the introductory paragraph of (2); substituted "county voter roll as electronically maintained by the Statewide Elections Management System" for "registration books and pollbooks" or "registration books, pollbooks" in (3), (4)(a) and (5); in (7), rewrote the first sentence, which read: "The county registrar shall prepare the pollbooks and the county commissioners of election shall prepare the registration books of each municipality located within the county pursuant to an agreement between the county and each municipality in the county," inserted "the actual cost of" and "municipal master voter roll" in the second sentence, and rewrote the last sentence, which read: "A municipality may secure 'read only' access to the Statewide Centralized Voter System and print its own pollbooks using this information; however, county commissioners of election shall remain responsible for preparing registration books for municipalities and shall be paid for this duty in accordance with this subsection"; deleted "Section 23-15-491" following "by this section" in (11); and made gender neutral and minor stylistic changes.

The 2018 amendment substituted "One Hundred Dollars ($100.00)" for "Eighty-four Dollars ($84.00)" once in (2), (4)(a), and (5); and substituted "X $100.00" for "X $84.00" in the Per Diem Claim Form.

**Cross References —**

Provision that, with respect to the determination of appeals from allowance or refusal of applications for registration, the dates provided in § 23-15-153, and former §§ 23-15-155 and 23-15-157 are supplemental to that set forth in § 23-15-65, see § 23-15-67.

Provision that, at the meetings provided for in this section the county election commissioners shall hear and determine any pending, perfected appeals from decisions of the registrar allowing or refusing applications for registration, see § 23-15-67.

Application of per diem amounts specified in this section to per diem for election commissioners attending elections training seminars, see § 23-15-211.

Provision that registrars shall receive the same per diem as is provided for board of election commissioners in this section and § 23-15-227, as compensation for assisting the county election commissioners in performance of their duties, see § 23-15-225.

**Federal Aspects—**

National Voter Registration Act of 1993, see 52 U.S.C.S. § 20501 et seq.

## JUDICIAL DECISIONS

### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-5-79.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-5-79.**

The commissioners of election of each county have the duty under this section [Code 1942, § 3239] to erase the names of all persons erroneously registered. United States v. Ramsey, 331 F.2d 824, 1964 U.S. App. LEXIS 6291 (5th Cir. Miss. 1964).

This section [Code 1942, § 3239] is directory and not mandatory and in the absence of prejudice or fraud, a meeting three days before a bond issue election will be sufficiently effective. Tedder v. Board of Sup'rs, 214 Miss. 717, 59 So. 2d 329, 1952 Miss. LEXIS 512 (Miss. 1952).

Where the election commissioners certified to the Board of Supervisors the essential matters necessary for the issuance of bonds of a school district, and had determined all the jurisdictional facts essential to the validity of the election, and the Board of Supervisors had found all the jurisdictional facts essential to the issuance of the bonds and had directed their issuance and validation, dependency of the mandamus suit in circuit court based on the claim that the election commissioners had unlawfully changed the registration books after they had met and revised the election rolls, was no bar to a validation proceeding in chancery court, where no appeal was taken from the order of the Board of Supervisors to the circuit court, a mandamus suit being no substitute for the appeal provided by law. In re Validation of Bonds, 185 Miss. 864, 188 So. 318, 1939 Miss. LEXIS 168 (Miss. 1939).

Where election commissioners met for purpose of revising registration and poll books, notation "transferred to [another election district]" made on poll book opposite names of voters held ineffective as an adjudication that they were disqualified as electors. Carver v. State, 177 Miss. 54, 170 So. 643, 1936 Miss. LEXIS 244 (Miss. 1936). But see Wade v. Williams, 517 So. 2d 573, 1987 Miss. LEXIS 2971 (Miss. 1987).

Mandamus did not lie to require county election commissioners to restore name erased from registration books on ground petitioner had become disqualified as elector. Calvert v. Crosby, 163 Miss. 177, 139 So. 608, 1932 Miss. LEXIS 25 (Miss. 1932).

Remedy of elector whose name is erased from registration books is to apply for reregistration and, on denial thereof, appeal to board of election commissioners, and, if necessary, to circuit court. Calvert v. Crosby, 163 Miss. 177, 139 So. 608, 1932 Miss. LEXIS 25 (Miss. 1932).

## OPINIONS OF THE ATTORNEY GENERAL

Individual commissioners may perform preliminary work of identifying those individuals who have died, moved away or otherwise have become disqualified as voters without quorum of commissioners present; however, official act of removing names of those individuals who have, as matter of fact, become disqualified, must be taken by commission as whole or quorum thereof. 1990 Miss. Op. Att'y Gen. 89.

Statute which provides per diem for commissioners contemplates that commission as whole be in session; however, if commission determines that in order to fulfill its' statutory responsibilities it is necessary for individual commissioners to work when quorum is not present and county board of supervisors authorizes compensation for such work, individual commissioners would be entitled to compensation for such work. 1990 Miss. Op. Att'y Gen. 89.

Municipal election commissioners are required to meet on schedule set forth in statute as there are no specific statutory provisions setting forth dates that municipal election commissioners must meet. 1990 Miss. Op. Att'y Gen. 572.

Commissioners are to be paid per diem for any day in which they are engaged in statutory duties (revising registration books and pollbooks or conducting election), regardless of amount of time they actually work. 1991 Miss. Op. Att'y Gen. 48.

Once county election commission has made factual determination that voter has "removed" himself from his county of registration, commission has statutory duty and obligation to remove that voter's name from registration books and pollbooks, regardless of whether voter has signed cancellation form or registered in another county or state. 1991 Miss. Op. Att'y Gen. 455.

There is no apparent authority for county board of supervisors to compensate individual members of party executive committee for the work they perform for their party, including holding primary elections in place of county election commissioners. 1992 Miss. Op. Att'y Gen. 549.

Miss. Code Section 23-15-153 provides for meeting of commissioners, revision of registration rolls and books, and compensation of commissioners at per diem allowance. 1993 Miss. Op. Att'y Gen. 263.

Commissioner who works five or more hours in one day is paid $70.00 for that day with no carry over of any hours worked in excess of five hours, but commissioner may carry over hours if he works less than five hours on any particular day so that hours carried over would be added to hours of less than five worked on other days until a total of five hours is accumulated. 1993 Miss. Op. Att'y Gen. 496.

There is no requirement that election commission or executive committees actually be in session and present with Registrar in order for Registrar to perform ministerial tasks and be entitled to appropriate compensation. 1993 Miss. Op. Att'y Gen. 575.

Section 23-15-153 applies to Municipal Voting Rolls in that same procedures may be employed to purge Municipal Voting Rolls. 1993 Miss. Op. Att'y Gen. 593.

There is no United States Department of Justice requirement that must be made regarding purging of municipal voter rolls; proper guidelines to follow are found in Section 23-15-153. 1993 Miss. Op. Att'y Gen. 593.

Municipalities can purge the voter rolls based on returned mass mailings unless federal election law applies. Exum-1998 Miss. Op. Att'y Gen. 149.

Any and all requests for access to or copies of county voter registration records must be made to the county registrar, and it is the duty and responsibility of the county registrar to insure that voters' social security numbers, telephone numbers, and dates of birth and age information are excluded prior to granting access or providing copies of such records. 2000 Miss. Op. Att'y Gen. 112.

The purging duties of county election commissioners are subject to an annual limitation regardless of the number of regularly scheduled primary or general elections; they would be entitled to additional days for purging only for special elections except those conducted on the regular special election day in November; therefore, for purposes of compensation of county election commissioners for their purging duties, primary and general elections are not separate events in the sense that would entitle commissioners to compensation in excess of the stated annual limitation on days. 2000 Miss. Op. Att'y Gen. 594.

Subsection (4) does not encompass primary elections because county election commissioners have no duties in the conduct of primaries. 2000 Miss. Op. Att'y Gen. 594.

The revision of the poll books for a primary election would entitle a county election commissioner to be compensated pursuant to subsection (2) subject to the annual limitation specified therein. 2000 Miss. Op. Att'y Gen. 594.

A per diem may be earned in one of two ways: first, a period of not less than five hours during a particular day would entitle a commissioner to a per diem; second, a period of less than five hours worked during a particular day may be carried forward and added to other periods of less than five hours. Once a total of five hours is accumulated over a period of two or more days, the commissioner would also be entitled to a per diem. 2000 Miss. Op. Att'y Gen. 594.

Any per diem earned for work in connection with revising primary election poll books will count against the annual limitation set forth in subsection (2); and, no per diem pursuant to subsection (4) can be earned with regard to a primary election because county election commissioners have no duties in the conduct of primaries. 2000 Miss. Op. Att'y Gen. 594.

A registrar must be actually employed in assisting election commissioners or party executive committees, either personally or through a deputy, for a minimum of five hours during a day or for a minimum of five hours accumulated over two or more days in order to claim a per diem; if a registrar, either personally or through a deputy, is actually employed in assisting both the democratic and republican executive committees for the requisite period during the same day, he or she would be entitled to claim two per diems. 2000 Miss. Op. Att'y Gen. 667.

The number of per diem days county election commissioners may lawfully claim is that prescribed by House Bill 685 based on the population figures of the 2000 federal decennial census, provided that all hours worked are actually required, performed, and documented as required by law; there is no requirement to prorate the number of days for calendar year 2001 between the "old law" and the "new law." 2001 Miss. Op. Att'y Gen. 598.

The statute as it read on April 17, 2001 controlled as to the number of per diem days county election commissioners could lawfully claim, and House Bill 685 did not grant any additional days for the April 17 flag referendum or any other election conducted prior to June 13, 2001. 2001 Miss. Op. Att'y Gen. 598.

County election commissioners were entitled to claim per diem days for revising the registration books and pollbooks during calendar year 2001 up to the maximum number authorized by House Bill 685 even though the new law only became effective on June 13, 2001, provided that such purging was necessary and the work was performed and documented as required by law. 2001 Miss. Op. Att'y Gen. 598.

Performing one or more of various duties, such as training poll workers, appointing poll workers, distributing ballot boxes, having ballots printed, distributing ballots, and/or receiving and canvassing election returns, in connection with primary elections does not constitute performing official duties of a county election commission for which per diem is authorized pursuant to the statute. 2001 Miss. Op. Att'y Gen. 638.

The Election Commissioners Association of Mississippi can lawfully sponsor one or more training events for its members, and election commissioners attending a training event sponsored by the association are entitled to receive a per diem provided a training certificate from the association is received and provided the six day limit is not exceeded. 2002 Miss. Op. Att'y Gen. 26.

Individual election commissioners may be employed on a part-time basis by the board of supervisors to perform redistricting tasks provided the board determines, consistent with the facts that (1) the work involved is not required to be performed by the registrar or deputy registrar; and (2) the work is over and above the regular statutory duties of the election commissioners. Martin, Jr., 2002 Miss. Op. Att'y Gen. 326.

There is no authority for a county board of supervisors to election commission members for redistricting work over and above their regular "purging" duties. 2003 Miss. Op. Att'y Gen. 96.

Even in the absence of a book listing persons who have been convicted of disqualifying crimes, the election commission is still responsible under subsection (1) of this section for removing disenfranchised felons from the voter rolls from other sources, such as the docket book in the Attorney General's office. Also, under 23-15-19, the circuit clerk as county registrar is required to erase from the registration records the name of any person convicted of any disenfranchising crime. 2003 Miss. Op. Att'y Gen. 555.

With the exception of removing names of persons convicted of disqualifying crimes from the registration records by the circuit clerk, the election commission has sole authority for maintaining and purging the voter roll. 2003 Miss. Op. Att'y Gen. 555.

There is nothing that allows a county board of supervisors to authorize per diem for election commissioners for days in excess of that provided for by this section. The mandate of the court for a hand recount of ballots must be met even if it means working beyond normal hours each of the remaining days. 2004 Miss. Op. Att'y Gen. 594.

Failure of a municipal election commission to properly purge registration books and poll books in accordance with Section 23-15-153 could result in the fraudulent use of the names of deceased voters or voters who have been otherwise disqualified to cast illegal votes which could affect the validity of the election. 2005 Miss. Op. Att'y Gen. 129.

Each county registrar must use sound discretion in determining whether the chairman of the election commission should be the only one other than the registrar to have a key to the room where voter registration records are stored. Reasonable hours of access to the room would be established by the circuit clerk, in his or her discretion. 2005 Miss. Op. Att'y Gen. 378.

The work necessitated by municipal redistricting is not a part of the regular duties of municipal election commissioners. Therefore, the municipal governing authorities may employ and compensate individual county election commissioners or they may employ and compensate individual municipal election commissioners to perform such work. 2005 Miss. Op. Att'y Gen. 414.

Individual county election commissioners are entitled to per diem compensation pursuant to Section 23-15-153 for conducting demonstrations of Diebold voting machines. 2006 Miss. Op. Att'y Gen. 65.

There is no statutory mandate as to where the election commission must meet to conduct other than official business; however, notice of any meeting that is not at a place and time specified by statute to conduct official business or discuss matters that may lead to the formulation of public policy must be given and the meeting must held in accordance with the State Open Meetings law. 2006 Miss. Op. Att'y Gen. 196.

Governing authorities may lawfully set the compensation of municipal election commissioners at the same rate and within the guidelines established by Section 23-15-153 for county election commissioners. 2006 Miss. Op. Att'y Gen. 455.

A county election commission may continue to purge names from the registration books and poll books within 90 days of a regularly scheduled primary or general election with the exception that any program the purpose of which is to systematically remove the names of ineligible voters based on residency must be completed prior to 90 days prior to a regularly scheduled primary or general election. 2006 Miss. Op. Att'y Gen. 620.

The minutes of a county election commission should be available as a public record in the office of the circuit clerk. 2006 Miss. Op. Att'y Gen. 620.

## RESEARCH REFERENCES

**Am. Jur.**

25 Am. Jur. 2d, Elections § 179.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 22 (petition to strike name from register

of voters).

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 25 (order of court providing for revision of voter list).

**CJS.**

29 C.J.S., Elections §§ 128–135.

### §§ 23-15-155 and 23-15-157. Repealed.

Repealed by Laws, 1987, ch. 499, § 19, eff from and after July 24, 1987 (the date on which the United States Attorney General interposed no objection to the repeal of this section).

§ 23-15-155. [Derived from 1972 Code § 23-5-80 (Laws, 1983, ch. 423, § 3; Laws, 1986, ch. 484, § 14; repealed by Laws, 1986, ch. 495, § 335); en, Laws, 1986, ch. 495, § 44]

§ 23-15-157. [Derived from 1972 Code § 23-5-81 (Codes, 1942, § 3240; Laws, 1938, Ex ch. 84; Laws, 1946, ch. 220; Laws, 1958, ch. 541; Laws, 1963, 1st Ex Sess ch. 33; Laws, 1966, ch. 612, § 1; Laws, 1975, ch. 497, § 1; Laws, 1979, ch. 487, § 2; Laws, 1983, ch. 423, §§ 2, 4; repealed by Laws, 1986, ch. 495, § 335); en, Laws, 1986, ch. 495, § 45]

**Editor's Notes —**

Former § 23-15-155 provided for meeting of commissioners, revision of registration books and pollbooks, and compensation of commissioners during Congressional election years.

Former § 23-15-157 provided for the annual meeting of commissioners and revision of registration books and pollbooks, and compensation of commissioners.

### § 23-15-159. Repealed.

Repealed by Laws, 2000, ch. 430, § 7, effective from and after August 11, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the repeal of this section).

[Derived from 1972 Code § 23-5-82 [Laws, 1983, ch. 524, §§ 1, 2; Repealed by Laws, 1986, ch. 495, § 335]; En, Laws, 1986, ch. 495, § 46, eff from and after January 1, 1987.]

**Editor's Notes —**

Former § 23-15-159 required that the names of persons who have not voted in at least one election in the last four successive years be erased from the registration books and pollbooks.

On August 11, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the repeal of this section by Laws of 2000, ch. 430, § 7.

### § 23-15-160. Repealed.

Repealed by Laws of 2017, ch. 441, § 189, effective July 1, 2017.

§ 23-15-160. [Laws, 2000, ch. 430, § 5, eff from and after August 11, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the enactment of this section.)]

**Editor's Notes —**

Former § 23-15-160 required that the names of electors whose registration was cancelled under former § 23-15-159 be returned to registration books and pollbooks.

### § 23-15-161. Attendance and assistance of county registrar at meeting of county election commissioners.

The county registrar shall:

(a) Attend the meetings of the county election commissioners;

(b) Permit and furnish them access to the Statewide Elections Management System; and

(c) Render them all needed assistance of which the registrar is capable in the performance of their duties in revising the list of qualified electors.

**HISTORY:**

Derived from 1972 Code § 23-5-83 [Codes, 1880, § 125; 1892, § 3636; 1906, § 4143; Hemingway's 1917, § 6777; 1930, § 6212; 1942, § 3241; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 47; Laws, 2017, ch. 441, § 28, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment divided the section into the introductory paragraph and paragraphs (a) through (c), and therein inserted "county" in the introductory paragraph, "county election" in (a), rewrote (b), which read: "and shall furnish them the registration books and the pollbooks," and in (c), deleted "and shall" from the beginning and substituted "the registrar" for "he."

#### OPINIONS OF THE ATTORNEY GENERAL

Phrase "all needed assistance of which he is capable" is intended to encourage cooperation between registrar and election commissioners to insure that registration books and pollbooks contain only names of those individuals who meet statutory requirements of qualified elector. 1990 Miss. Op. Att'y Gen. 201.

#### RESEARCH REFERENCES

**Am. Jur.**

25 Am. Jur. 2d, Elections §§ 97, 98.

## SUBARTICLE G.

## STATEWIDE CENTRALIZED VOTER SYSTEM.

Sec.
23-15-163. Purpose of subarticle.
23-15-165. Implementation of centralized database of registered voters; functions; format; advisory committee.
23-15-167. Repealed.

### § 23-15-163. Purpose of subarticle.

The purposes of this subarticle are:

(a) To establish a centralized statewide qualified voter file that consists of all qualified electors who are registered to vote;

(b) To enhance the uniformity of the administration of elections by creating and maintaining a centralized statewide file of qualified voters;

(c) To increase the efficiency and decrease the cost of maintaining voter registration records and implementing the National Voter Registration Act of 1993;

(d) To increase the integrity of the voting process by compiling a single centralized qualified voter file from county voter roll data that will permit the name of each citizen of this state to appear only once;

(e) To apply technology and information gathered by principal executive departments of state government, state agencies and local voter registrars in a manner that ensures that accurate and current records of qualified voters are maintained and to secure cooperation among all state and county entities to develop systems and processes that are interfaced with the Statewide Elections Management System; and

(f) To enable the state to receive federal funds which may be available to carry out provisions of this subarticle.

**HISTORY:**

Laws, 2002, ch. 588, § 1; Laws, 2017, ch. 441, § 29, eff from and after July 1, 2017.

**Editor's Notes —**

The United States Attorney General, by letter dated July 29, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the addition of this subarticle by Laws of 2002, ch. 588, §§ 1 through 3.

**Amendment Notes —**

The 2017 amendment substituted "Statewide Elections Management System" for "Centralized Statewide Voter System" in (e).

**Federal Aspects—**

National Voter Registration Act of 1993, see 52 U.S.C.S. § 20501 et seq.

## § 23-15-165. Implementation of centralized database of registered voters; functions; format; advisory committee.

(1) The Office of the Secretary of State, in cooperation with the county registrars and election commissioners, shall procure, implement and maintain an electronic information processing system and programs capable of maintaining a centralized database of all registered voters in the state. The system shall encompass software and hardware, at both the state and county level, software development training, conversion and support and maintenance for the system. This system shall be known as the "Statewide Elections Management System" and shall constitute the official record of registered voters in every county of the state.

(2) The Office of the Secretary of State shall develop and implement the Statewide Elections Management System so that the registrar and election commissioners of each county shall:

(a) Verify that an applicant that is registering to vote in that county is not registered to vote in another county;

(b) Be notified automatically that a registered voter in its county has registered to vote in another county;

(c) Receive regular reports of death, changes of address and convictions for disenfranchising crimes that apply to voters registered in the county; and

(d) Retain all present functionality related to, but not limited to, the use of voter roll data and to implement such other functionality as the law requires to enhance the maintenance of accurate county voter records and related jury selection and redistricting programs.

(3) As a part of the procurement and implementation of the system, the Office of the Secretary of State shall, with the assistance of the advisory

committee, procure services necessary to convert current voter registration records in the counties into a standard, industry accepted file format that can be used on the Statewide Elections Management System. Thereafter, all official voter information shall be maintained on the Statewide Elections Management System. The standard industry accepted format of data was reviewed and approved by a majority of the advisory committee created in subsection (5) of this section after consultation with the Circuit Clerks Association and the format may not be changed without consulting the Circuit Clerks Association.

(4) The Secretary of State may, with the assistance of the advisory committee, adopt rules and regulations necessary to administer the Statewide Elections Management System. The rules and regulations shall at least:

(a) Provide for the establishment and maintenance of a centralized database for all voter registration information in the state;

(b) Provide procedures for integrating data into the centralized database;

(c) Provide security to ensure that only the registrar, or his or her designee or other appropriate official, as the law may require, can add information to, delete information from and modify information in the system;

(d) Provide the registrar or his or her designee or other appropriate official, as the law may require, access to the system at all times, including the ability to download copies of the industry standard file, for all purposes related to their official duties, including, but not limited to, exclusive access for the purpose of printing all local pollbooks;

(e) Provide security and protection of all information in the system and monitor the system to ensure that unauthorized access is not allowed;

(f) Provide a procedure that will allow the registrar, or his or her designee or other appropriate official, as the law may require, to identify the precinct to which a voter should be assigned; and

(g) Provide a procedure for phasing in or converting existing manual and computerized voter registration systems in counties to the Statewide Elections Management System.

(5) The Secretary of State established an advisory committee to assist in developing system specifications, procurement, implementation and maintenance of the Statewide Elections Management System. The committee included two (2) representatives from the Circuit Clerks Association, appointed by the association; two (2) representatives from the Election Commissioners Association of Mississippi, appointed by the association; one (1) member of the Mississippi Association of Supervisors, or its staff, appointed by the association; the Director of the Stennis Institute of Government at Mississippi State University, or his or her designee; the Executive Director of the Department of Information Technology Services, or his or her designee; two (2) persons knowledgeable about elections and information technology appointed by the Secretary of State; and the Secretary of State, who shall serve as the chair of the advisory committee.

(6)(a) Social security numbers, telephone numbers and date of birth and age information in statewide, district, county and municipal voter registration files shall be exempt from and shall not be subject to inspection, examination, copying or reproduction under the Mississippi Public Records Act of 1983.

(b) Copies of statewide, district, county or municipal voter registration files, excluding social security numbers, telephone numbers and date of birth and age information, shall be provided to any person in accordance with the Mississippi Public Records Act of 1983 at a cost not to exceed the actual cost of production.

**HISTORY:**

Laws, 2002, ch. 588, § 2; Laws, 2006, ch. 574, § 13, eff June 5, 2006 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section); Laws, 2017, ch. 441, § 30, eff from and after July 1, 2017.

**Editor's Notes —**

The United States Attorney General, by letter dated July 29, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the addition of this subarticle by Laws of 2002, ch. 588, §§ 1 through 3.

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, § 13.

**Amendment Notes —**

The 2017 amendment, in (1), deleted "From and after July 1, 2002" from the beginning and made related changes, substituted "county registrars" for "local registrars," and deleted "begin to" preceding "procure"; rewrote the last sentence of (3), which read: "The standard industry accepted format of data shall be reviewed and approved by a majority of the advisory committee created in subsection (5) of this section after consultation with the Circuit Clerks Association and the format may not be changed without majority approval of the advisory committee and without consulting the Circuit Clerks Association"; deleted "subprecinct" following "identify the precinct" in (4)(f); in (5), substituted "established" for "shall establish" and "included" for "shall include"; and made gender neutral and minor stylistic changes.

**Cross References —**

Mississippi Public Records Act of 1983, see §§ 25-61-1 et seq.

### JUDICIAL DECISIONS

**1. Relation to federal law.**

Public disclosure provision of National Voter Registration Act (NVRA) did not require disclosure of unredacted voter registration documents, including voter registrant birthdates, and therefore redaction provisions under Mississippi law were not preempted because there was no direct conflict. True the Vote v. Hosemann, 43 F. Supp. 3d 693, 2014 U.S. Dist. LEXIS 120962 (S.D. Miss. 2014).

## § 23-15-167. Repealed.

Repealed by Laws of 2017, ch. 441, § 190, effective July 1, 2017.

§ 23-15-167. [Laws, 2002, ch. 588, § 3, eff July 29, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)]

**Editor's Notes —**

Former § 23-15-167 related to expenditures for the purchase of computer hardware or software.

# SUBARTICLE H.

# COMPLIANCE WITH HELP AMERICA VOTE ACT OF 2002.

| Sec. | |
|---|---|
| 23-15-169. | Secretary of State to establish administrative complaint procedure for handling grievances. |
| 23-15-169.1. | Secretary of State and Commissioner of Public Safety to enter agreement granting access to driver's license and identification cardholder databases for purpose of matching information in Statewide Elections Management System. |
| 23-15-169.2. | Commissioner of Public Safety to enter agreement with Commissioner of Social Security to verify accuracy of information provided with respect to applications for voter registration. |
| 23-15-169.3. | Secretary of State authorized to accept and expend federal funds under Help America Vote Act of 2002; eligibility for federal funds of counties purchasing voting systems that comply with Act. |
| 23-15-169.4. | Information to be provided to absent uniformed services voters and overseas voters regarding voter registration and absentee ballot procedures. |
| 23-15-169.5. | Rules and regulations to be promulgated by the Secretary of State. |
| 23-15-169.6. | Repealed. |
| 23-15-169.7. | "Help Mississippi Vote Fund" created; use of money in fund; funding of Office of Secretary of State expenses; deposit of user charges and fees authorized under this section into State General Fund and use of monies so deposited. |

## § 23-15-169. Secretary of State to establish administrative complaint procedure for handling grievances.

The Secretary of State shall, by rule and regulation, establish an administrative complaint procedure for handling grievances in accordance with the Help America Vote Act of 2002.

**HISTORY:**

Laws, 2004, ch. 305, § 2, eff July 12, 2004 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section).

**Editor's Notes —**

Laws of 2004, ch. 305, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the "Mississippi Help America Vote Act of 2002 Compliance Law."

On July 12, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2004, ch. 305, § 2.

**Federal Aspects—**

The Help America Vote Act of 2002, referred to in this section, is Act of Oct. 29, 2002, P.L. 107-252, which formerly appeared as 42 USCS § 15301 et seq. and is now codified as 52 USCS § 20901 et seq. For full classification of the Act, consult USCS Tables volumes.

### OPINIONS OF THE ATTORNEY GENERAL

The Secretary of State has the authority to issue regulations regarding Help America Vote Act (HAVA) and the authority to expend HAVA funds, with the only restriction on the expenditure of funds for purchase of voting systems being that the systems comply with HAVA requirements. 2005 Miss. Op. Att'y Gen. 442.

### § 23-15-169.1. Secretary of State and Commissioner of Public Safety to enter agreement granting access to driver's license and identification cardholder databases for purpose of matching information in Statewide Elections Management System.

The Secretary of State and the Commissioner of Public Safety shall enter into an agreement to grant the Secretary of State's Office "read only" access to the driver's license database and identification cardholder database for the purpose of matching information in the database of the Statewide Elections Management System created in Section 23-15-163 et seq. to the extent required to enable the Secretary of State to verify the accuracy of information provided on applications for voter registration in compliance with the Help America Vote Act of 2002.

**HISTORY:**

Laws, 2004, ch. 305, § 3; Laws, 2017, ch. 441, § 31, eff from and after passage (approved Apr. 18, 2017).

**Editor's Notes —**

On July 12, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2004, ch. 305, § 3.

**Amendment Notes —**

The 2017 amendment, effective April 18, 2017, substituted "Statewide Elections Management System" for "Statewide Centralized Voter System."

**Federal Aspects—**

The Help America Vote Act of 2002, referred to in this section, is Act of Oct. 29, 2002, P.L. 107-252, which formerly appeared as 42 USCS § 15301 et seq. and is now codified as 52 USCS § 20901 et seq. For full classification of the Act, consult USCS Tables volumes.

### § 23-15-169.2. Commissioner of Public Safety to enter agreement with Commissioner of Social Security to verify accuracy of information provided with respect to applications for voter registration.

The Commissioner of Public Safety shall enter into an agreement with the Commissioner of Social Security under Section 205 (r) (8) of the Social Security Act in accordance with the Help America Vote Act of 2002 to verify the accuracy of applicable information provided by the Commissioner of Public Safety with respect to applications for voter registration.

**HISTORY:**

Laws, 2004, ch. 305, § 4, eff July 12, 2004 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section).

**Editor's Notes —**

On July 12, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2004, ch. 305, § 4.

**Federal Aspects—**

Section 205(r)(8) of the Social Security Act, referred to in this section, is codified at 42 USCS § 405(r)(8).

The Help America Vote Act of 2002, referred to in this section, is Act of Oct. 29, 2002, P.L. 107-252, which formerly appeared as 42 USCS § 15301 et seq. and is now codified as 52 USCS § 20901 et seq. For full classification of the Act, consult USCS Tables volumes.

### § 23-15-169.3. Secretary of State authorized to accept and expend federal funds under Help America Vote Act of 2002; eligibility for federal funds of counties purchasing voting systems that comply with Act.

(1) The Secretary of State shall have the authority to accept federal funds authorized under the Help America Vote Act of 2002 and to meet all the requirements of the Help America Vote Act of 2002 in order to expend the funds.

(2) Counties that purchase or have purchased since January 1, 2001, voting systems that comply with the requirements of the Help America Vote Act of 2002 shall be eligible for federal funds accepted by the Secretary of State for Help America Vote Act of 2002 compliance efforts. The only restriction that the Secretary of State may place on the expenditure of federal funds for the purchase of voting systems is that the systems comply with the criteria and rules established in the Help America Vote Act of 2002 for voting systems.

(3) Counties may purchase voting systems under the Help America Vote Act of 2002 (HAVA) if:

(a) The system selected is HAVA compliant as determined by the rules promulgated to effectuate the Help America Vote Act of 2002 in this state; and

(b) The County Board of Supervisors spreads upon its minutes a certification of the following:

(i) The county determined it is in its best interest to opt out of any statewide bulk purchase to be effectuated by the Secretary of State pursuant to his duties under HAVA;

(ii) The voting system selected by the county meets all of the foregoing requirements under HAVA;

(iii) The county understands and accepts any and all liability for said system; and

(iv) The county is solely responsible for the purchase of said system.

Upon meeting the foregoing requirements, a county shall be reimbursed for its costs for said system from the HAVA funds for this purpose; however, the county shall be limited in its reimbursement to an amount to be determined by the Secretary of State based upon an objective formula implemented for the statewide, bulk purchase of said voting systems. Any costs over and above the set formula described herein shall be the sole responsibility of the county.

(c) In addition to other information required by paragraph (b) of this subsection, any county that purchases voting systems after June 6, 2005 shall spread upon its minutes certification of the following:

(i) All voting systems within the county are the same, except those machines that are handicap accessible as required by HAVA; and

(ii) The voting systems have a device or mechanism that allows any votes cast to be verified by paper audit trail.

**HISTORY:**

Laws, 2004, ch. 305, § 5; Laws, 2005, ch. 534, § 16, eff June 6, 2005 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

On July 12, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2004, ch. 305, § 5.

On June 6, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2005, ch. 534, § 16.

**Federal Aspects—**

The Help America Vote Act of 2002, referred to in this section, is Act of Oct. 29, 2002, P.L. 107-252, which formerly appeared as 42 USCS § 15301 et seq. and is now codified as 52 USCS § 20901 et seq. For full classification of the Act, consult USCS Tables volumes.

## § 23-15-169.4. Information to be provided to absent uniformed services voters and overseas voters regarding voter registration and absentee ballot procedures.

The Secretary of State shall be responsible for providing to all absent uniformed services voters and overseas voters who wish to vote or register to vote in this state information required by the Help America Vote Act of 2002 regarding voter registration procedures and absentee ballot procedures to be used by absent uniformed services voters and overseas voters with respect to elections, including procedures relating to the use of the federal write-in absentee ballot.

**HISTORY:**

Laws, 2004, ch. 305, § 6, eff July 12, 2004 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section).

**Editor's Notes —**

On July 12, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2004, ch. 305, § 6.

**Federal Aspects—**

The Help America Vote Act of 2002, referred to in this section, is Act of Oct. 29, 2002, P.L. 107-252, which formerly appeared as 42 USCS § 15301 et seq. and is now codified as 52 USCS § 20901 et seq. For full classification of the Act, consult USCS Tables volumes.

## § 23-15-169.5. Rules and regulations to be promulgated by the Secretary of State.

The Secretary of State shall promulgate rules and regulations necessary to effectuate the provisions of the Help America Vote Act of 2002 in this state.

**HISTORY:**

Laws, 2004, ch. 305, § 7, July 12, 2004 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section).

**Editor's Notes —**

On July 12, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2004, ch. 305, § 7.

**Federal Aspects—**

The Help America Vote Act of 2002, referred to in this section, is Act of Oct. 29, 2002, P.L. 107-252, which formerly appeared as 42 USCS § 15301 et seq. and is now codified as 52 USCS § 20901 et seq. For full classification of the Act, consult USCS Tables volumes.

### § 23-15-169.6. Repealed.

Repealed by Laws of 2017, ch. 402, § 1, and ch. 441, § 191, effective from and after July 1, 2017.

§ 23-15-169.6. [Laws, 2005, ch. 534, § 18, eff June 6, 2005 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)]

**Joint Legislative Committee Note —**

Section 1 of Chapter 402, Laws of 2017, effective from and after July 1, 2017 (approved April 5, 2017), repealed this section. Section 191 of Chapter 441, Laws of 2017, effective from and after July 1, 2017 (approved April 18, 2017), also repealed this section. Section 1-3-79 provides that whenever the same section of law is amended/repealed by different bills during the same legislative session, and the effective dates of the amendments/repeals are the same, the amendment/repeal with the latest approval date supersedes all other amendments/repeals to the same section approved on an earlier date. The controlling act repealing this section is therefore Chapter 441, Laws of 2017.

**Editor's Notes —**

Former § 23-15-169.6 created a task force to study voting systems complying with Help America Vote Act of 2002, provided for its composition, appointments, meetings, quorum requirements, compensation and staff, and required the reporting of findings and recommendations.

### § 23-15-169.7. "Help Mississippi Vote Fund" created; use of money in fund; funding of Office of Secretary of State expenses; deposit of user charges and fees authorized under this section into State General Fund and use of monies so deposited.

(1) There is created in the State Treasury a special fund, to be designated the "Help Mississippi Vote Fund" to the credit of the Secretary of State, which shall be comprised of the monies required to be deposited into the fund under Section 7-3-59, and any other funds that may be made available for the fund by the Legislature.

(2) Monies in the fund shall be expended by the Secretary of State to support the state's maintenance of efforts as required by the federal mandates of the Help America Vote Act of 2002.

(3) Unexpended amounts remaining in the special fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned or investment earnings on amounts in the special fund shall be deposited to the credit of the special fund.

(4) From and after July 1, 2016, the expenses of this agency shall be defrayed by line item appropriation from the State General Fund to the Office of Secretary of State and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law and as determined by the State Fiscal Officer, and shall not be authorized for expenditure by the Secretary of State to reimburse or otherwise defray expenses of any office administered by the Secretary of State.

(5) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

**HISTORY:**

Laws, 2006, ch. 309, § 20; Laws, 2016, ch. 459, § 46; Laws, 2017, ch. 441, § 32; Laws, 2017, 1st Ex Sess, ch. 7, § 4, eff from and after passage (approved June 23, 2017); Laws, 2018, ch. 343, § 2, eff from and after passage (approved March 8, 2018).

**Joint Legislative Committee Note —**

Section 32 of Chapter 441, Laws of 2017, effective from and after July 1, 2017 (approved April 18, 2017), amended this section. Section 4 of Chapter 7, Laws of 2017, First Extraordinary Session, effective from and after passage (approved June 23, 2017), also amended this section. As set out above, this section reflects the language of Section 4 of Chapter 7, Laws of 2017, First Extraordinary Session, which contains language that specifically provides that it supersedes § 23-15-5 as amended by Chapter 441, Laws of 2017.

**Editor's Notes —**

Laws of 2016, ch. 459, § 1, codified as § 27-104-201, provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Budget Transparency and Simplification Act of 2016.' "

**Amendment Notes —**

The first 2017 amendment (ch. 441), effective July 1, 2017, added "and for compensation . . . Section 23-15-239" at the end of (2).

The second 2017 amendment (ch. 7, 1st Ex Sess), effective June 23, 2017, rewrote (4), which read: "From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law."

The 2018 amendment, effective March 8, 2018, deleted "and for compensation paid to any certified poll manager under Section 23-15-239" from the end of (2).

**Cross References —**

Fees collected under § 75-9-525, see § 7-3-59.

Prohibition against one state agency charging another state agency fees, etc., for services or resources received, see § 27-104-203.

Defrayal of expenses of certain state agencies by appropriation of Legislature from General Fund, see § 27-104-205.

**Federal Aspects—**

The Help America Vote Act of 2002, referred to in this section, is Act of Oct. 29, 2002, P.L. 107-252, which formerly appeared as 42 USCS § 15301 et seq. and is now codified as 52 USCS § 20901 et seq. For full classification of the Act, consult USCS Tables volumes.

## ARTICLE 5.

## TIMES OF PRIMARY AND GENERAL ELECTIONS.

Subarticle A. Municipal Elections. .......................................... 23-15-171
Subarticle B. Other Elections. .............................................. 23-15-191

## SUBARTICLE A.

## MUNICIPAL ELECTIONS.

Sec.
23-15-171. Primary elections.
23-15-173. General elections; applicability of this section and Section 23-15-171 to certain special or private charter municipalities.

### § 23-15-171. Primary elections.

(1) Municipal primary elections shall be held on the first Tuesday in April preceding the general municipal election and, in the event a second primary shall be necessary, such second primary shall be held on the fourth Tuesday in April preceding such general municipal election. The candidate receiving a majority of the votes cast in the election shall be the party nominee. If no candidate shall receive a majority vote at the election, the two (2) candidates

receiving the highest number of votes shall have their names placed on the ballot for the second primary election. The candidate receiving the most votes cast in the second primary election shall be the party nominee. However, if no candidate shall receive a majority vote at the first primary, and there is a tie in the election of those receiving the next highest vote, those candidates receiving the next highest vote and the candidate receiving the highest vote shall have their names placed on the ballot for the second primary election, and whoever receives the most votes cast in the second primary election shall be the party nominee. At the primary election the municipal executive committee shall perform the same duties as are specified by law and performed by members of the county executive committee with regard to state and county primary elections. Each municipal executive committee shall have as many members as there are elective officers of the municipality, and the members of the municipal executive committee of each political party shall be elected in the primary elections held for the nomination of candidates for municipal offices. The provisions of this section shall govern all municipal primary elections as far as applicable, but the officers to prepare the ballots and the poll managers and other officials of the primary election shall be appointed by the municipal executive committee of the party holding the primary, and the returns of such election shall be made to such municipal executive committee. Vacancies in the executive committee shall be filled by it.

(2) Provided, however, that in municipalities operating under a special or private charter which fixes a time for holding elections, other than the time fixed by Chapter 491, Laws of 1950, the first primary election shall be held on the first Tuesday, two (2) months before the time for holding the general election, as fixed by the charter, and the second primary election, where necessary, shall be held three (3) weeks after the first primary election, unless the charter of any such municipality provides otherwise, in which event the provisions of the special or private charter shall prevail as to the time of holding such primary elections.

(3) All primary elections in municipalities shall be held and conducted in the same manner as is provided by law for state and county primary elections.

**HISTORY:**

Derived from 1972 Code § 23-1-63 [Codes, 1906, § 3726; Hemingway's 1917, § 6417; 1930, § 5905; 1942, § 3152; Laws, 1910, ch. 209; Laws, 1950, ch. 499; Laws, 1952, ch. 379; Laws, 1970, ch. 506, § 18; repealed by Laws, 1986, ch. 495, § 331]; en, Laws, 1986, ch. 495, § 48; Laws, 2017, ch. 441, § 33, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment, in (1), substituted "April" for May twice, and "fourth Tuesday" for "third Tuesday" in the first sentence, added the second through fifth sentences, and inserted "poll" in the next-to-last sentence; in (2), substituted "on the first Tuesday, two (2) months" for "exactly four (4) weeks" and "three (3) weeks" for "two (2) weeks"; and made minor stylistic changes.

**Cross References —**

Applicability of provisions of this section to certain special or private charter municipalities, see § 23-15-173.

## JUDICIAL DECISIONS

### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-1-63.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-1-63.**

A candidate for municipal office, who withdrew from the party nomination after a second primary resulted in a tie between him and another and a third primary was called in violation of law, and who thereafter presented a petition signed by eighty-eight qualified electors of the town to have his name printed on the official ballot, was entitled to have his name printed on the official ballot as a candidate for the office in the general election, his participation in the first and second primaries being no bar to that course. Omar v. West, 186 Miss. 136, 188 So. 917, 1939 Miss. LEXIS 196 (Miss. 1939).

Where the result of a second primary called by a political party ended in a tie for two candidates for a municipal office the election of one of such candidates after nomination by a third primary was void. Omar v. West, 186 Miss. 136, 188 So. 917, 1939 Miss. LEXIS 196 (Miss. 1939).

## OPINIONS OF THE ATTORNEY GENERAL

Election of individuals to Democratic Municipal Executive Committee in 1986 was not matter of general knowledge among citizenry of Yazoo City, and temporary committee was established; individuals duly elected in 1986 to serve as municipal democratic executive committee had legal authority and responsibility to conduct 1990 municipal democratic primary election. 1990 Miss. Op. Att'y Gen. 100.

Miss. Code Section 23-15-171 which requires that members of municipal party executive committees be elected implies that anyone who wishes to be member of executive committee must declare candidacy for membership; therefore, one who wishes to be candidate for membership on municipal party executive committee must express intention by filing with municipal clerk written statement of intent just as candidates for regular municipal offices are required to do by Miss. Code Section 23-15-309. 1993 Miss. Op. Att'y Gen. 292.

The standard for the payment of rent for the use of a polling place is reasonableness, and municipal governing authorities may consider any factors deemed appropriate in arriving at an amount they deem to be reasonable. 2003 Miss. Op. Att'y Gen. 513.

Where only one person was elected to serve on a municipal party executive committee, it is suggested that the one duly elected member appoint another individual and that they together appoint an additional member and continue in that manner until a full complement of members comprise the committee. 2004 Miss. Op. Att'y Gen. 587.

No authority can be found in state law for a municipal party executive committee to remove one of its members on its own motion. 2005 Miss. Op. Att'y Gen. 409.

## § 23-15-173. General elections; applicability of this section and Section 23-15-171 to certain special or private charter municipalities.

(1) A general municipal election shall be held in each city, town or village on the first Tuesday after the first Monday of June 1985, and every four (4) years thereafter, for the election of all municipal officers elected by the people.

(2) All municipal general elections shall be held and conducted in the same manner as is provided by law for state and county general elections.

(3) The provisions of Sections 23-15-171 and 23-15-173, which fix the times to hold primary and general elections, shall not apply to any municipality operating under a special or private charter where the governing board or authority thereof, on or before June 25, 1952, shall have adopted and spread upon its minutes a resolution or ordinance declining to accept the provisions,

in which event the primary and general elections shall be held at the time fixed by the charter of the municipality.

**HISTORY:**

Derived from 1972 Code § 21-11-7 [Codes, 1930, § 2597; 1942, § 3374-62; Laws, 1922, ch. 219; Laws, 1928, ch. 184; Laws, 1932, ch. 226; Laws, 1936, ch. 281; Laws, 1950, ch. 491 § 62; Laws, 1976, ch. 485, § 11; repealed by Laws, 1986, ch. 495, § 329]; en, Laws, 1986, ch. 495, § 49; Laws, 2017, ch. 441, § 34, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment added (3).

### OPINIONS OF THE ATTORNEY GENERAL

The standard for the payment of rent for the use of a polling place is reasonableness, and municipal governing authorities may consider any factors deemed appropriate in arriving at an amount they deem to be reasonable. 2003 Miss. Op. Att'y Gen. 513.

## SUBARTICLE B.

## OTHER ELECTIONS.

Sec.
23-15-191. Primary elections.
23-15-193. Officers to be elected at general state election.
23-15-195. Elections to be by ballot in one day.
23-15-197. Times for holding elections.

### § 23-15-191. Primary elections.

The first primary shall be held on the first Tuesday after the first Monday of August preceding any regular or general election; and the second primary shall be held three (3) weeks thereafter. The candidate that receives a majority of the votes cast in the election shall be the party nominee. If no candidate receives a majority vote at the election, then the two (2) candidates who receive the highest number of votes shall have their names placed on the ballot for the second primary election to be held three (3) weeks later. The candidate who receives the most votes in the second primary election shall be the party nominee. However, if no candidate receives a majority vote at the first primary, and there is a tie in the election of those receiving the next highest vote, then those candidates receiving the next highest vote and the candidate receiving the highest vote shall have their names placed on the ballot for the second primary election to be held three (3) weeks later, and whoever receives the most votes cast in the second primary election shall be the party nominee.

**HISTORY:**

Derived from 1942 Code § 3109 [Codes, 1906, § 3700; Hemingway's 1917, § 6391; 1930, § 5868; Laws, 1914, ch. 149; Laws, 1982, ch. 477, § 1; repealed, Laws, 1970, ch. 506, § 33; repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; en, Laws, 1986, ch. 495, § 50; Laws, 1989, ch. 506, § 1; Laws, 2017, ch. 441, § 35, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment rewrote the section, which read: "The first primary shall be held on the first Tuesday after the first Monday of August preceding any regular or general election; and the second primary shall be held three (3) weeks thereafter. Any candidate who receives the highest popular vote cast for the office which he seeks in the first primary shall thereby become the nominee of the party for such office; provided also it be a majority of all the votes cast for that office. If no candidate receive such majority of popular votes in the first primary, then the two (2) candidates who receive the highest popular vote for such office shall have their names submitted as such candidates to a second primary, and the candidate who leads in such second primary shall be nominated to the office. When there is a tie in the first primary of those receiving next highest vote, these two (2) and the one (1) receiving the highest vote, none having received a majority, shall go into the second primary, and whoever leads in such second primary shall be entitled to the nomination."

**Cross References —**

Requirement that a petition contesting the qualifications of a candidate for general election be filed within a certain number of days after the date of the first primary election set forth in this section, see § 23-15-963.

### OPINIONS OF THE ATTORNEY GENERAL

Where a candidate received more than half of the total votes cast for all three candidates in a primary election, he had a majority of the votes as contemplated by this this section and § 23-15-305. 2003 Miss. Op. Att'y Gen. 453.

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 223, 224 et seq.

26 Am. Jur. 2d, Elections §§ 180 et seq., 220, 265, 296 et seq.

**CJS.**

29 C.J.S., Elections §§ 321–323 et seq., 535.

**Law Reviews.**

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

## § 23-15-193. Officers to be elected at general state election.

At the election in 1995, and every four (4) years thereafter, there shall be elected a Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, State Treasurer, Attorney General, three (3) public service commissioners, three (3) Mississippi Transportation Commissioners, Commissioner of Insurance, Commissioner of Agriculture and Commerce, Senators and members of the House of Representatives in the Legislature, district attorneys for the several districts, clerks of the circuit and chancery courts of the several counties, as well as sheriffs, coroners, assessors, surveyors and members of the boards of supervisors, justice court judges and constables, and all other officers to be elected by the people at the general state election. All such officers shall hold their offices for a term of four (4) years, and until their successors are elected and qualified. The state officers shall be elected in the manner prescribed in Section 140 of the Constitution.

**HISTORY:**

Derived from 1972 Code § 23-5-93 [Codes, Hutchinson's 1848, ch. 7, art. 5 (1); 1857, ch. 4, art. 1; 1871, § 357; 1880, § 118; 1892, § 3633; 1906, § 4140; Hemingway's 1917, § 6774; 1930, § 6210; 1942, § 3238; Laws, 1970, ch. 506, § 23; Laws, 1978, ch. 458, § 16; Laws, 1982, Ex Sess, ch. 17, § 19; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 51; Laws, 1992, ch. 496, § 12, eff from and after July 1, 1992.

**Editor's Notes —**

Section 7-7-2, as added by Laws of 1984, chapter 488, § 90, and amended by Laws of 1985, chapter 455, § 14, Laws of 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor," and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

**Cross References —**

Office of Lieutenant Governor generally, see Miss. Const. Art. 5, §§ 128 et seq.

Legislative offices generally, see § 5-1-1 et seq.

Office of Governor generally, see § 7-1-1 et seq.

Office of Secretary of State generally, see § 7-3-1 et seq.

Office of Attorney General generally, see § 7-5-1 et seq.

Office of State Treasurer generally, see § 7-9-1 et seq.

Chancery clerks generally, see § 9-5-131 et seq.

Circuit clerks generally, see § 9-7-121 et seq.

Justice court judges generally, see § 9-11-2 et seq.

County boards of supervisors generally, see § 19-3-1 et seq.

Constables generally, see § 19-19-1 et seq.

Sheriffs generally, see § 19-25-1 et seq.

Surveyors generally, see § 19-27-1 et seq.

Voter registration opportunities required prior to regularly scheduled primary or general elections, see § 23-15-37.

Person appointed by Governor to serve as district attorney to fill vacancy until election can be held may practice law privately while serving, see §§ 25-31-35, 25-31-36, and 25-31-39.

Assessors generally, see § 27-1-1 et seq.

Highway commissioners generally, see § 65-1-3.

Commissioner of Agricultural and Commerce generally, see § 69-1-3.

Appointment and term of public service commissioners, see § 77-1-1.

Commissioner of Insurance generally, see § 83-1-3.

### OPINIONS OF THE ATTORNEY GENERAL

An incumbent supervisor may continue to serve until such time as a successor is lawfully elected and qualified in accordance with a court ordered special election, assuming that a court has not ordered otherwise. 1999 Miss. Op. Att'y Gen. 698.

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 302 et seq.

**Law Reviews.**

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

## § 23-15-195. Elections to be by ballot in one day.

All elections by the people shall be by ballot, and shall be concluded in one (1) day.

**HISTORY:**

Derived from 1972 Code § 23-5-89 [Codes, Hutchinson's 1848, ch. 7, art 5 (1); 1857, ch. 4, art 1; 1871, § 356; 1880, § 117; 1892, § 3632; 1906, § 4139; Hemingway's 1917, § 6773; 1930, § 6209; 1942, § 3237; Laws, 1970, ch. 506, § 22; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 52, eff from and after January 1, 1987.

RESEARCH REFERENCES

**Am. Jur.**
26 Am. Jur. 2d, Elections §§ 312, 316-320, 331.

**CJS.**
29 C.J.S., Elections §§ 434–516.

### § 23-15-197. Times for holding elections.

(1) Times for holding primary and general elections for congressional offices shall be as prescribed in Sections 23-15-1031, 23-15-1033 and 23-15-1041.

(2) Times for holding elections for the office of judge of the Supreme Court shall be as prescribed in Section 23-15-991 and Sections 23-15-974 through 23-15-985, and times for holding elections for the office of judge of the Court of Appeals shall be as prescribed in Section 9-4-5.

(3) Times for holding elections for the office of circuit court judge and the office of chancery court judge shall be as prescribed in Sections 23-15-974 through 23-15-985, and Section 23-15-1015.

(4) Times for holding elections for the office of county election commissioners shall be as prescribed in Section 23-15-213.

(5) Times for holding elections for the office of levee commissioner shall be as prescribed in Chapter 12, Laws of 1928; Chapter 574, Laws of 1968; Chapter 85, Laws of 1930; Chapter 317, Laws of 1983; and Chapter 438, Laws of 2010.

**HISTORY:**
Laws, 1986, ch. 495, § 53; Laws, 1994, ch 564, § 88; Laws, 2017, ch. 441, § 36, eff from and after July 1, 2017.

**Editor's Notes —**
The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 88.

**Amendment Notes —**
The 2017 amendment added "and times for holding...Section 9-4-5" at the end of (2); and added (5).

RESEARCH REFERENCES

**Am. Jur.**
26 Am. Jur. 2d, Elections § 303.

**CJS.**
29 C.J.S., Elections § 535.

## ARTICLE 7.

## ELECTION OFFICIALS.

Sec.

23-15-211. Composition and duties of State Board of Election Commissioners; elections training seminar; certification of seminar participants; compensation of commissioners attending seminar; authorization by Secretary of State of additional training days.
23-15-211.1. Secretary of State designated Mississippi's chief election officer; chief election officer to gather certain information regarding elections; annual report on voter participation.
23-15-212. Repealed.
23-15-213. Election of county election commissioners.
23-15-215. Performance by board of supervisors of election commissioners' duties.

Sec.
23-15-217. County election commissioner authorized to be candidate for other office; resignation from office; duties and powers of board of supervisors where election of county election commissioner is contested.
23-15-219. Employment by board of election commissioners of investigators, legal counsel and others.
23-15-221. Appointment and duties of municipal election commissioners; election by municipality to abolish municipal election commissioners in the municipality's county; municipal election commissioners' duties assumed by county election commissioners.
23-15-223. County registrar shall be circuit court clerk unless found improper; appointment of deputy registrars; liability of registrar for malfeasance or nonfeasance of deputy registrar; computer skills training course.
23-15-225. Compensation of registrars.
23-15-227. Compensation of poll managers.
23-15-229. Compensation of municipal poll managers and other workers.
23-15-231. Appointment of poll managers; designation of bailiff.
23-15-233. Duties of poll managers.
23-15-235. Appointment of additional poll managers.
23-15-237. Oath of office for poll managers.
23-15-239. Mandatory training of poll managers; single, comprehensive poll manager training program; certified poll managers.
23-15-240. Appointment of student interns to serve during elections.
23-15-241. Election bailiff to keep peace.
23-15-243. Selection of election bailiff if none designated.
23-15-245. Duties of election bailiff; polls to be open and clear.
23-15-247. Ballot boxes.
23-15-249. Procedure when pollbooks or ballot boxes not distributed.
23-15-251. Duties of poll manager designated to receive and distribute ballots.
23-15-253. Poll managers to be furnished stationery and blank forms.
23-15-255. Voting compartments, shelves and tables; information required to be posted at precinct polling place on election day.
23-15-257. Duties of marshal or chief of police in municipal elections.
23-15-259. Authority of boards of supervisors to allow compensation of officers rendering services in registration and elections and reasonable sum to supply voting compartments, tables and shelves.
23-15-261. Certification of service as poll managers.
23-15-263. Duties of county executive committees at primary elections.
23-15-265. Meeting of county executive committee; appointment of poll managers by committee.
23-15-266. Executive committee authorized to enter into agreements regarding conduct of elections if certain criteria met.
23-15-267. Primary election ballot boxes; penalty for failure to deliver ballot boxes.
23-15-269. Repealed.
23-15-271. Election integrity assurance committee.

## § 23-15-211. Composition and duties of State Board of Election Commissioners; elections training seminar; certification of seminar participants; compensation of commissioners attending seminar; authorization by Secretary of State of additional training days.

(1) There shall be a State Board of Election Commissioners to consist of the following members:

(a) The Governor, who shall serve as chair;

(b) The Secretary of State, who shall serve as secretary, maintain minutes of all meetings and accept service of process on behalf of the board; and

(c) The Attorney General.

Any two (2) of the members of the State Board of Election Commissioners may perform the duties required of the board.

(2) The duties of the board shall include, but not be limited to, the following:

(a) Ruling on a candidate's qualifications to run for statewide, Supreme Court, Court of Appeals, congressional district, circuit and chancery court district, and other state district offices;

(b) Approving the state ballot for the offices stated in paragraph (a) of this subsection (2);

(c) Removing the names of candidates from the ballot for failure to comply with campaign finance filing requirements for the offices stated in paragraph (a) of this subsection (2) in previous election cycles; and

(d) Adopting any administrative rules and regulations as are necessary to carry out the statutory duties of the board.

(3) The board of supervisors of each county shall pay members of the county election commission for attending training events a per diem in the amount provided in Section 23-15-153; however, except as otherwise provided in this section, the per diem shall not be paid to an election commissioner for more than twelve (12) days of training per year and shall only be paid to election commissioners who actually attend and complete a training event and obtain a training certificate.

(4) Included in this twelve (12) days shall be an elections seminar, conducted and sponsored by the Secretary of State. Election commissioners and chairpersons of each political party executive committee, or their designee, shall be required to attend. An election commissioner shall be certified by the Secretary of State only after attending the annual elections seminar and satisfactorily completing the skills assessment provided for in Section 23-15-213.

(5) Each participant shall receive a certificate from the Secretary of State indicating that the named participant has received the elections training seminar instruction and satisfactorily completed the skills assessment provided for in Section 23-15-213. Election commissioners shall annually file the certificate with the chancery clerk. If any election commissioner shall fail to file the certificate by April 30 of each year, his or her office shall be vacated, absent exigent circumstances as determined by the board of supervisors and consistent with the facts. The vacancy shall be declared by the board of supervisors and the vacancy shall be filled in the manner described by law. Before declaring the office vacant, the board of supervisors shall give the election commissioner notice and the opportunity for a hearing.

(6) The Secretary of State, upon approval of the board of supervisors, may authorize not more than eight (8) additional training days per year for election commissioners in one or more counties. The board of supervisors of each county shall pay members of the county election commission for attending training on these days a per diem in the amount provided in Section 23-15-153.

**HISTORY:**

Derived from 1972 Code § 23-5-1 [Codes, 1871, §§ 340 et seq; 1880, § 121; 1892, § 3601; 1906, § 4107; Hemingway's 1917, § 6741; 1930, § 6176; 1942, § 3204; Laws, 1964, 1st Ex Sess ch. 30; Laws, 1968 ch. 568, § 1; Laws, 1970, ch. 509, § 1; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 54; Laws, 1990, ch. 325, § 1; Laws, 2004, ch. 305, § 13; Laws, 2006, ch. 592, § 3; Laws, 2008, ch. 528, § 3; Laws, 2014, ch. 397, § 2; brought forward without change, Laws, 2016, ch. 326, § 3; Laws, 2017, ch. 441, § 37, eff from and after July 1, 2017; brought forward without change, Laws, 2018, ch. 399, § 4, eff from and after July 1, 2018.

**Editor's Notes —**

Laws of 2004, ch. 305, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the 'Mississippi Help America Vote Act of 2002 Compliance Law.' "

On July 12, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2004, ch. 305, § 13.

On June 29, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 592, § 3.

On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

**Amendment Notes —**

The 2017 amendment rewrote (1), which read: "(1) There shall be: (a) A State Board of Election Commissioners to consist of the Governor, the Secretary of State and the Attorney General, any two (2) of whom may perform the duties required of the board; (b) A board of election commissioners in each county to consist of five (5) persons who are electors in the county in which they are to act; and (c) A registrar in each county who shall be the clerk of the circuit court, unless he shall be shown to be an improper person to register the names of the electors in the county"; added (2) and redesignated the remaining paragraphs accordingly; added the last sentence of (4); in (5), rewrote the first sentence, which read: "Each participant shall receive a certificate from the Secretary of State indicating that the named participant has received the elections training seminar instruction and that each participant is fully qualified to conduct an election," substituted "election commissioners" for "commissioners of election" in the second and third sentences, and made a gender neutral and minor stylistic change; substituted "election commissioners" for "commissioners of election" in (6); and deleted former (6) and (7), which related to the development of a pollworker training program and computer skills training and computer skills refresher courses.

The 2018 amendment brought the section forward without change.

**Cross References —**

Office of Governor generally, see § 7-1-1 et seq.

Office of Secretary of State generally, see § 7-3-1 et seq.

Office of Attorney General generally, see § 7-5-1 et seq.

**Federal Aspects—**

The Help America Vote Act of 2002 is Act of Oct. 29, 2002, P.L. 107-252, formerly appearing as 42 USCS § 15301 et seq., now codified as 52 USCS § 20901 et seq. For full classification of the Act, consult USCS Tables volumes.

## JUDICIAL DECISIONS

### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-5-1.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-5-1.**

Failure to conform to statutory requirements in the appointment of election commissioners merely makes them de facto officers whose acts do not invalidate an election. Barnes v. Ladner, 241 Miss. 606, 131 So. 2d 458, 1961 Miss. LEXIS 380 (Miss. 1961).

State election commissioners have power, authority, and responsibility to help administer voter registration laws by formulating rules for the various tests applied to applicants for registration, and for the reason that these rules and tests are vitally important elements of Mississippi laws challenged in an action brought by the United States to end discrimination in voter registration, the commissioners should not have been stricken as parties defendants to the action on the ground that they lacked sufficient interest in administering or enforcing the challenged laws. Barnes v. McLeod, 165 Miss. 437, 140 So. 740, 1932 Miss. LEXIS 265 (Miss. 1932).

Suit to enjoin county election commissioners from placing Democratic nominee for county office on official ballots for general election because of fraud in primary election held not within jurisdiction of chancery court. Barnes v. McLeod, 165 Miss. 437, 140 So. 740, 1932 Miss. LEXIS 265 (Miss. 1932).

### OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 23-15-211 provides for appointment of Municipal Election Commissioners. 1993 Miss. Op. Att'y Gen. 263.

While one of the authorized training events for which commissioners may receive a per diem must be a seminar sponsored by the Secretary of State, other training events may be sponsored by other entities; thus, the Election Commissioners Association of Mississippi can lawfully sponsor one or more training events for its members. 2002 Miss. Op. Att'y Gen. 26.

### RESEARCH REFERENCES

**Am. Jur.**
25 Am. Jur. 2d, Elections §§ 83, 84.

**CJS.**
29 C.J.S., Elections §§ 193, 195–206, 214.

**Law Reviews.**
Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

## § 23-15-211.1. Secretary of State designated Mississippi's chief election officer; chief election officer to gather certain information regarding elections; annual report on voter participation.

(1) For purposes of the National Voter Registration Act of 1993, the Secretary of State is designated as Mississippi's chief election officer.

(2) As the chief election officer of the State of Mississippi, the Secretary of State shall have the power and duty to gather sufficient information concerning voting in elections in this state. The Secretary of State shall gather information on voter participation and submit an annual report to the Legislature, the Governor, the Attorney General and the public.

**HISTORY:**
Laws, 2000, ch. 430, § 6; Laws, 2008, ch. 528, § 4, eff August 7, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**
On August 11, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the enactment of this section by Laws of 2000, ch. 430, § 6.

On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

**Federal Aspects—**
National Voter Registration Act of 1993, see 52 U.S.C.S. § 20501 et seq.

### OPINIONS OF THE ATTORNEY GENERAL

Statutory requirements applicable to the acquisition of computer equipment and services are also applicable to the acquisition of computer equipment and services necessary to implement a computerized statewide voter registration system under the Help America Vote Act (HAVA). However, acquisitions of computer equipment and services approved by ITS in order to implement a computerized voter registration system under HAVA will also have to be approved by the Secretary of State. 2004 Miss. Op. Att'y Gen. 340.

## § 23-15-212. Repealed.

Repealed by Laws of 2017, ch. 441, § 192, effective July 1, 2017.

§ 23-15-212. [Laws, 1993, ch. 528, § 1, eff from and after August 16, 1993 (the date the United States Attorney General interposed no objection to the addition of this section).]

**Editor's Notes —**

Former § 23-15-212 created a study committee to conduct a study to determine how registrars, election commissioners, executive committee members and poll workers can be better trained in the conduct of elections.

## § 23-15-213. Election of county election commissioners.

### [Until December 31, 2022, this section shall read as follows:]

(1) At the general election in 2020, there shall be elected five (5) election commissioners for each county whose terms of office shall commence on the first Monday of January following their election. Each of the commissioners shall be required to attend a training seminar provided by the Secretary of State and satisfactorily complete a skills assessment, and before acting, shall take and subscribe the oath of office prescribed by the Constitution. The oath shall be filed in the office of the clerk of the chancery court. Upon filing the oath of office, the election commissioner may be provided access to the Statewide Elections Management System for the purpose of performing his or her duties. While engaged in their duties, the commissioners shall be conservators of the peace in the county, with all the duties and powers of such.

(2) The qualified electors of each supervisors district shall elect, at the general election in 2020, in their district one (1) election commissioner. The election commissioners from board of supervisors' Districts One, Three and Five shall serve for a term of four (4) years. The election commissioners from board of supervisors' Districts Two and Four shall serve for a term of three (3) years. No more than one (1) commissioner shall be a resident of and reside in each supervisors district of the county; it being the purpose of this section that the county board of election commissioners shall consist of one (1) person from each supervisors district of the county and that each commissioner be elected from the supervisors district in which he or she resides.

(3) Candidates for county election commissioner shall qualify by filing with the clerk of the board of supervisors of their respective counties a petition personally signed by not less than fifty (50) qualified electors of the supervisors district in which they reside, requesting that they be a candidate, by 5:00 p.m. not later than the first Monday in June of the year in which the election occurs and unless the petition is filed within the required time, their names shall not be placed upon the ballot. All candidates shall declare in writing their party affiliation, if any, to the board of supervisors, and such party affiliation shall be shown on the official ballot.

(4) The petition shall have attached thereto a certificate of the county registrar showing the number of qualified electors on each petition, which shall be furnished by the registrar on request. The board shall determine the

sufficiency of the petition, and if the petition contains the required number of signatures and is filed within the time required, the president of the board shall verify that the candidate is a resident of the supervisors district in which he or she seeks election and that the candidate is otherwise qualified as provided by law, and shall certify that the candidate is qualified to the chair or secretary of the county election commission and the names of the candidates shall be placed upon the ballot for the ensuing election. No county election commissioner shall serve or be considered as elected until he or she has received a majority of the votes cast for the position or post for which he or she is a candidate. If a majority vote is not received in the first election, then the two (2) candidates receiving the most votes for each position or post shall be placed upon the ballot for a second election to be held three (3) weeks later in accordance with appropriate procedures followed in other elections involving runoff candidates.

(5) Upon taking office, the county election commissioners shall organize by electing a chair and a secretary.

(6) It shall be the duty of the chair to have the official ballot printed and distributed at each general or special election.

**[From and after January 1, 2023, this section shall read as follows:]**

(1) There shall be elected five (5) election commissioners for each county whose terms of office shall commence on the first Monday of January following their election and who shall serve for a term of four (4) years. Each of the commissioners shall be required to attend a training seminar provided by the Secretary of State and satisfactorily complete a skills assessment, and before acting, shall take and subscribe the oath of office prescribed by the Constitution. The oath shall be filed in the office of the clerk of the chancery court. Upon filing the oath of office, the election commissioner may be provided access to the Statewide Elections Management System for the purpose of performing his or her duties. While engaged in their duties, the commissioners shall be conservators of the peace in the county, with all the duties and powers of such.

(2)(a) At the general election in 2024 and every four (4) years thereafter, the qualified electors of the board of supervisors' Districts One, Three and Five shall elect in their district one (1) election commissioner.

(b) At the general election in 2023 and every four (4) years thereafter, the qualified electors of the board of supervisors' Districts Two and Four shall elect in their district one (1) election commissioner.

(c) No more than one (1) commissioner shall be a resident of and reside in each supervisors district of the county; it being the purpose of this section that the county board of election commissioners shall consist of one (1) person from each supervisors district of the county and that each commissioner be elected from the supervisors district in which he or she resides.

(3) Candidates for county election commissioner shall qualify by filing with the clerk of the board of supervisors of their respective counties a petition personally signed by not less than fifty (50) qualified electors of the supervisors district in which they reside, requesting that they be a candidate, by 5:00 p.m.

not later than the first Monday in June of the year in which the election occurs and unless the petition is filed within the required time, their names shall not be placed upon the ballot. All candidates shall declare in writing their party affiliation, if any, to the board of supervisors, and such party affiliation shall be shown on the official ballot.

(4) The petition shall have attached thereto a certificate of the county registrar showing the number of qualified electors on each petition, which shall be furnished by the registrar on request. The board shall determine the sufficiency of the petition, and if the petition contains the required number of signatures and is filed within the time required, the president of the board shall verify that the candidate is a resident of the supervisors district in which he or she seeks election and that the candidate is otherwise qualified as provided by law, and shall certify that the candidate is qualified to the chair or secretary of the county election commission and the names of the candidates shall be placed upon the ballot for the ensuing election. No county election commissioner shall serve or be considered as elected until he or she has received a majority of the votes cast for the position or post for which he or she is a candidate. If a majority vote is not received in the first election, then the two (2) candidates receiving the most votes for each position or post shall be placed upon the ballot for a second election to be held three (3) weeks later in accordance with appropriate procedures followed in other elections involving runoff candidates.

(5) In the first meeting in January of each year, the county election commissioners shall organize by electing a chair and a secretary, who shall serve a one (1) year term. The county election commissioners shall provide the names of the chair and secretary to the Secretary of State and provide notice of any change in officers which may occur during the year.

(6) It shall be the duty of the chair to have the official ballot printed and distributed at each general or special election.

**HISTORY:**

Derived from 1972 Code §§ 23-5-3 [Codes, 1871, §§ 340 et seq; 1880, § 121; 1892, § 3602; 1906, § 4108; Hemingway's 1917, § 6742; 1930, § 6177; 1942, § 3205; Laws, 1968, ch. 568, § 2; Laws, 1978, ch. 431, § 1; Laws, 1979, ch. 359, § 1; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 55; Laws, 2000, ch. 592, § 2; Laws, 2009, ch. 437, § 1; Laws, 2017, ch. 441, § 38, eff from and after July 1, 2017; Laws, 2018, ch. 399, § 1, eff from and after July 1, 2018.

**Editor's Notes —**

On July 28, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 592.

By letter dated August 4, 2009, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2009, ch. 437, § 1.

There is an error in this section as it was amended by § 38 of Chapter 441. The act set the section out in two tiers, one effective until January 1, 2028, and the other effective from and after January 1, 2032, leaving a gap between January 1, 2028, and January 1, 2032. The error was corrected by Laws of 2018, ch. 399, § 1.

**Amendment Notes —**

The 2017 amendment provided for two versions of this section; in the version effective until January 1, 2028, designated the formerly undesignated paragraphs (1) through (6), in (1), substituted "election in 2020" for "election in 1984," and "election commissioners" for "commissioners of election," divided the former second sentence into the present second and third sentences, in the second sentence, inserted "shall be required to...complete a skills assessment and," in the third sentence, inserted "shall be filed" and deleted "there to remain" from the end, and added the fourth sentence, in (2), rewrote the first sentence, which read: "The qualified electors of each supervisors district shall elect, at the general election in 1984 and every four (4) years thereafter, in their district one (1) commissioner of election" and added the second and third sentences, inserted "county" near the beginning of (4), substituted "election commissioners" for "commissioners of election" in (5), and made gender neutral and minor stylistic changes throughout; and added the version of the section effective from and after January 1, 2032.

The 2018 amendment, in the first version, substituted "December 31, 2022" for "January 1, 2028" in the bracketed effective date language, in the first sentence of (1), deleted "and every four (4) years thereafter" following "election in 2020" and deleted "and who shall serve for a term of four (4) years" from the end, and in the third sentence of (2), substituted "term of three (3) years" for "term of six (6) years"; in the second version, substituted "January 1, 2023" for "January 1, 2032" in the bracketed effective date language, and in (2), substituted "election in 2024" for "election in 2032" in (a) and "election in 2023" for "election in 2034" in (b).

**Cross References —**

Provision that times for holding elections for the office of county election commissioner shall be as prescribed in this section, see § 23-15-197.

Procedures for contesting the qualifications of a person who has qualified pursuant to the provisions of this section as a candidate for any office elected at a general election, see § 23-15-963.

## JUDICIAL DECISIONS

### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-5-3.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-5-3.**

Failure to conform to statutory requirements in the appointment of election commissioners merely makes them de facto officers whose acts do not invalidate an election. Barnes v. Ladner, 241 Miss. 606, 131 So. 2d 458, 1961 Miss. LEXIS 380 (Miss. 1961).

Each of the three commissioners is under duty to report and present to the commissioners as a body all petitions which have been duly presented to him. State ex rel. Rice v. Dillon, 197 Miss. 504, 19 So. 2d 918, 1944 Miss. LEXIS 315 (Miss. 1944).

Power to determine whose name is entitled to appear upon the ballot is vested not in the ballot commissioner alone but in the commissioners as a body. State ex rel. Rice v. Dillon, 197 Miss. 504, 19 So. 2d 918, 1944 Miss. LEXIS 315 (Miss. 1944).

## OPINIONS OF THE ATTORNEY GENERAL

Where Court ruled that county-wide elections for post of Election Commissioners for Simpson County were enjoined, appropriate officials must proceed to fill vacancy on Simpson County Election Commission due to death of previous Election Commissioner, provided that this would be acceptable to U.S. District Court for Southern District of Mississippi which retains jurisdiction over issue of how elections for election commissioners shall be conducted. 1990 Miss. Op. Att'y Gen. 553.

## RESEARCH REFERENCES

**Am. Jur.**

25 Am. Jur. 2d, Elections § 85.

**CJS.**

29 C.J.S., Elections §§ 207–214.

## § 23-15-215. Performance by board of supervisors of election commissioners' duties.

If there shall not be election commissioners in any county, or if they fail to act, the duties prescribed for them shall be performed by the board of supervisors. In such case, the president of the board is charged with the duty of having the official ballot printed and distributed; and the poll managers shall make returns to the board, which shall canvass the returns, give certificates of election, and make report to the Secretary of State, in like manner as the election commissioners are required to do.

**HISTORY:**

Derived from 1972 Code §§ 23-5-177 [Codes, 1880, § 132, 1892, § 3642; 1906, § 4149; Hemingway's 1917, § 6783; 1930, § 6254; 1942, § 3283; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 56; Laws, 2017, ch. 441, § 39, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment substituted "election commissioners" for "commissioners of election" twice; and substituted "poll managers" for "managers of election."

**Cross References —**

Provision that in cases involving a contest of an election of a county election commissioner the duties of the commission in connection with such contest shall be performed by the board of supervisors as provided in this section, see § 23-15-217.

## OPINIONS OF THE ATTORNEY GENERAL

As long as the election commission performs its statutory duties, nothing can be found that gives board of supervisors any authority regarding the day-to-day operation of the commission. 2006 Miss. Op. Att'y Gen. 620.

## RESEARCH REFERENCES

**Am. Jur.**

25 Am. Jur. 2d, Elections §§ 85, 90, 91.

## § 23-15-217. County election commissioner authorized to be candidate for other office; resignation from office; duties and powers of board of supervisors where election of county election commissioner is contested.

(1) An election commissioner of any county may be a candidate for any other office at any election held or to be held during the four-year term for which he or she has been elected to the office of election commissioner; provided that he or she has resigned from the office of election commissioner before he or she files to qualify for the office that he or she desires to seek. The clerk for the board of supervisors must have actually received the resignation for it to be deemed submitted.

(2) In any case involving the election of a county election commissioner wherein there is a contest of any nature, including, but not limited to, the right of any person to vote or the counting of any challenge ballot, all the duties and powers of the commission in connection with the contest shall be performed by the board of supervisors, as is contemplated by Section 23-15-215 in cases where there are no election commissioners in the county.

**HISTORY:**

Derived from 1972 Code §§ 23-5-95 [Codes, 1871, § 342; 1880, § 122; 1892, § 3634; 1906, § 4141; Hemingway's 1917, § 6775; 1930, § 6213; 1942, § 3242; Laws, 1968, ch. 568, § 3; repealed by Laws, 1986, ch. 495, § 331]; en, Laws, 1986, ch. 495, § 57; Laws, 1989, ch. 483, § 1; Laws, 1991, ch. 613, § 1; Laws, 2003, ch. 447, § 1; Laws, 2013, ch. 474, § 1; Laws, 2017, ch. 441, § 40, eff from and after July 1, 2017.

**Editor's Notes —**

The United States Attorney General interposed no objection to the amendment by Laws of 1989, ch. 483, § 1.

The United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1991, ch. 613, § 1, on August 14, 1991.

The United States Attorney General, by letter dated June 9, 2003, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2003, ch. 447, § 1.

The effective date of Chapter 474, Laws of 2013, which amended this section, is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bill was approved, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. For that reason, the Mississippi Attorney General's Office submitted Chapter 474, Laws of 2013, to the United States Attorney General, in order to technically meet the requirements of Section 5 and fulfill the condition in the effective date of the bill, which will allow the bill to take effect.

By letter dated July 18, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 474 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 474, so Chapter 474 became effective from and after July 18, 2013, the date of the United States Attorney General's response letter.

**Amendment Notes —**

The 2017 amendment, in (1), in the first sentence, substituted "election commissioners" for "commissioners of election" twice, deleted "or with reference to which he or she has acted as such" preceding "provided that he or she," and substituted "files to qualify" for "qualifies," and added the last sentence; substituted "election commissioners" for "commissioners of election" in (2); and made minor stylistic changes.

**Cross References —**

Inapplicability of this section to members of the county executive committee who seek elective office, see § 23-15-263.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2.-5. [Reserved for future use.]
6. Under former § 23-5-95.

**1. In general.**

A county election commissioner was disqualified to run for the municipal office of mayor pursuant to § 23-15-217 because of her membership on the election commission. Stringer v. Lucas, 608 So. 2d 1351, 1992 Miss. LEXIS 657 (Miss. 1992).

Where a candidate for mayor was disqualified under § 23-15-217, a special election was warranted where over 40 percent of the votes cast were illegal and enough illegal votes were cast to change the ultimate results of the election. Stringer v. Lucas, 608 So. 2d 1351, 1992 Miss. LEXIS 657 (Miss. 1992).

Board of Supervisors' involvement in the redistricting process of a county was permissible where the Board of Supervisors assisted the election commissioners with information in order to comply with a federal court redistricting order in time to hold primaries, the evidence demonstrated that it was the Election Commission which made the decisions as to the redistricting pursuant to the statutory requirements of § 23-15-127, and the Board of Supervisors' participation was limited to supplying information. Pearson v. Parsons, 541 So. 2d 447, 1989 Miss. LEXIS 143 (Miss. 1989).

Section 23-15-263, which provides in part that "the county executive committee at primary elections shall discharge the functions imposed on the county election commissioners . . . and shall be subject to all the penalties to which all county election commissioners are subject," incorporates the prohibitions of § 23-15-217, which provides in part that "a commissioner of election of any county shall not be a candidate for any office at any election for which he may have been elected or with reference with which he as acted as such," and both sections were enacted to maintain and preserve the integrity of elections and ballot boxes. Thus, a county executive committee member was prohibited from being a candidate in an election which was conducted while he was a member. Breland v. Mallett, 527 So. 2d 629, 1988 Miss. LEXIS 221 (Miss. 1988).

Access to candidacy is not fundamental right and § 23-15-217 places no special burdens on minority parties or independent candidates; state has legitimate interest in preventing election commissioner from seeking another office while he has control of electors that shall vote for all candidates, where there would be potential for mischief were elections commissioner allowed effective control over registration and poll books, for 2 years, for example, then allowed to resign and seek another elective office. Meeks v. Tallahatchie County, 513 So. 2d 563, 1987 Miss. LEXIS 2856 (Miss. 1987).

Section 23-15-217 is not unconstitutionally void for vagueness because ordinary person of common intelligence upon reading it could understand what was allowed and what was not; statute provides two disqualifications upon county election commissioner offering himself as candidate for office: the first, no person holding office of elections commissioner may be candidate for election to any other office at any election held or to be held during 4 year term for which that person has been elected to serve as elections commissioner; second, commissioner may not be candidate for any other office in any election with respect to which he has taken any action in his official capacity; exception to both disqualifications is that incumbent election commissioner may be candidate for re-election. Meeks v. Tallahatchie County, 513 So. 2d 563, 1987 Miss. LEXIS 2856 (Miss. 1987).

Election commissioner was disqualified by statute as candidate for Justice Court Judge in 1987 election, or for any other office, except election commissioner, in any other election to be held during 4 year term which began January, 1985, notwithstanding that as election commissioner he may have in fact done nothing toward preparation for and conduct of 1987 elections; previous opinions of Attorney General to effect that elections commissioner could be candidate for other offices during term for which he was either appointed or elected, so long as he resigned as elections commissioner prior to taking any action with reference to election in which he sought to be candidate, was erroneous; however, construction of statute prohibiting such action would have no effect upon any election held prior to January 1, 1988, with exception of candidate in instant case. Meeks v. Tallahatchie County, 513 So. 2d 563, 1987 Miss. LEXIS 2856 (Miss. 1987).

**2.-5. [Reserved for future use.]**

**6. Under former § 23-5-95.**

Under statute prohibiting commissioner of election from becoming candidate for office, election of member of board of commissioners of levee district held not invalid because member had previously been appointed election commissioner where he took no oath of office or active part in proceeding of election commission and resigned as election commissioner on being informed that petition for his candidacy could not be allowed while he remained member of election commission, and where there was no other candidate whose rights might have been affected by member's action. State ex rel. District Attorney v. Jones, 177 Miss. 598, 171 So. 678, 1937 Miss. LEXIS 141 (Miss. 1937), overruled, Meeks v. Tallahatchie County, 513 So. 2d 563, 1987 Miss. LEXIS 2856 (Miss. 1987).

## OPINIONS OF THE ATTORNEY GENERAL

A municipal election commissioner may seek an elective municipal office provided he resigns as commissioner before January 1 of the year he desires to seek said elective office. 1991 Miss. Op. Att'y Gen. 907.

Municipal election commissioner may seek elective municipal office, provided he resigns as commissioner before January 1 of the year he desires to seek said office. 1992 Miss. Op. Att'y Gen. 74.

Election commissioner is not prohibited from performing his or her statutory duties when commissioner's spouse is candidate, and election commissioner whose spouse is candidate would not be prevented from participating with other commissioners in carrying out commission's statutory responsibilities in connection with elections. 1992 Miss. Op. Att'y Gen. 853.

Election commissioner must recuse him- or herself from participation in any such decisions that must be made with respect to the election of a commissioner in commissioner's supervisor district when he or she is candidate for re-election; if remaining commissioners are evenly divided on whether or not particular affidavit ballot should be counted, board of supervisors would have to make ruling. 1992 Miss. Op. Att'y Gen. 899.

The resignation of an election commissioner must be given to the board of supervisors prior to January 1, 1999, in order for the commissioner to be eligible to seek an elected office other than election commissioner during 1999. 1998 Miss. Op. Att'y Gen. 750.

The failure of a person appointed to the position of municipal election commissioner to take the oath of office results in the failure of that person to become fully qualified to assume the position, thus creating a vacancy; there was no need for the person to submit a letter of resignation. 2005 Miss. Op. Att'y Gen. 126.

RESEARCH REFERENCES

**ALR.**

State court jurisdiction over contest involving primary election for member of Congress. 68 A.L.R.2d 1320.

Constitutionality of candidate participation provisions for primary elections. 121 A.L.R.5th 1.

**Am. Jur.**

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 2 (petition alleging improper election of election officers).

**Law Reviews.**

1987 Mississippi Supreme Court Review, Professional responsibility. 57 Miss. L. J. 433, August, 1987.

## § 23-15-219. Employment by board of election commissioners of investigators, legal counsel and others.

(1) The board of election commissioners is hereby authorized and empowered to employ and set or determine the duties of and determine the compensation of such investigators, legal counsel, secretaries, technical advisors and any other employees or persons who or which the board or a majority thereof may deem necessary to enable them to discharge the duties and obligations presently or hereafter vested in them. However, before employing such persons or setting or determining the compensation, the election commissioners must first have the approval of the board of supervisors of the county.

(2) The board of supervisors of the county is authorized and empowered to pay out of the general fund of the county the salaries and necessary traveling and subsistence expenses of the employees of the board of election commissioners in such amounts as may be mutually agreed upon by the board of supervisors and board of election commissioners, but which shall be computed on the same basis allowed to state employees when traveling on state business. All expense accounts of the employees of the board of election commissioners shall be approved by the board of election commissioners and the board of supervisors or, in the discretion of each of the boards, by one (1) of the members of each of the boards duly authorized by the respective boards to approve or disapprove the subsistence, traveling and mileage expense accounts.

(3) Nothing in this section shall be construed to prohibit a person who holds the office of election commissioner from being employed and receiving compensation pursuant to this section. Any compensation which such a person may receive from his or her employment pursuant to this section shall be in addition to any compensation that person may receive in performing his or her duties as an election commissioner.

**HISTORY:**

Derived from 1972 Code § 23-5-97 [Codes, 1942, § 3242.5; Laws, 1966, Ex Sess, ch. 33, §§ 1, 2; Laws, 1983, ch. 363; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 58; Laws, 2017, ch. 441, § 41, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment inserted "election" preceding "commissioners" the first time it appears in (2); substituted "election commissioner" for "commissioner of election" twice in (3); and made gender neutral and minor stylistic changes.

### OPINIONS OF THE ATTORNEY GENERAL

The statute specifically authorizes the election commission, with the approval of the board of supervisors, to employ and compensate its members to perform work that enables the commission to carry out its own duties. Wright-1998 Miss. Op. Att'y Gen. 548.

Because the employment of a hearing officer by the county election commission to preside over an election contest convened under § 23-15-963 (1) did not have the statutorily required approval of the County Board of Supervisors, no compensation would be authorized. 2003 Miss. Op. Att'y Gen. 554.

### RESEARCH REFERENCES

**Am. Jur.**
25 Am. Jur. 2d, Elections §§ 90, 91.

**CJS.**
29 C.J.S., Elections §§ 195, 214.

## § 23-15-221. Appointment and duties of municipal election commissioners; election by municipality to abolish municipal election commissioners in the municipality's county; municipal election commissioners' duties assumed by county election commissioners.

(1) The governing authorities of municipalities having a population of less than twenty thousand (20,000) inhabitants according to the last federal decennial census shall appoint three (3) election commissioners; the governing authorities of municipalities having a population of twenty thousand (20,000) inhabitants or more and less than one hundred thousand (100,000) inhabitants according to the last federal decennial census shall appoint five (5) election commissioners; and the governing authorities of municipalities having a population of one hundred thousand (100,000) or more according to the last federal decennial census shall appoint seven (7) election commissioners. The municipal election commissioners, in conjunction with the municipal clerk, shall perform all the duties in respect to the municipal election prescribed by law to be performed by the county election commissioners where not otherwise provided. The election commissioners shall, in case there be but one (1) election precinct in the municipality, act as poll managers themselves.

(2) The city council or board of aldermen or other governing authority of any municipality desiring to avail itself of the provisions of the Mississippi Election Code regarding the duties of municipal election commissioners shall adopt an ordinance declaring its intention to enter into an agreement with the municipality's county to have the county election commissioners conduct municipal elections and other functions that are performed by municipal election commissioners for the benefit of the efficiency and conformity of elections, to be effective on and after a date fixed in the ordinance which must be at least thirty (30) days after the ordinance is adopted and on the first day of a month. If the municipality is located in more than one (1) county, the municipality shall choose which county it wants to conduct its elections and

other duties of its municipal election commissioners and enter into an agreement with that county to have that county's election commissioners conduct the municipal elections and other functions that are performed by municipal election commissioners for the benefit of the efficiency and conformity of elections, to be effective on and after a date fixed in the ordinance which must be at least thirty (30) days after the ordinance is adopted and on the first day of a month. A certified copy of this ordinance shall be immediately forwarded to the Chair of the State Board of Election Commissioners. The municipal authorities shall have a copy of the ordinance published once a week for three (3) consecutive weeks in at least one (1) newspaper published in the municipality and having a general circulation therein. The first publication shall be not less than twenty-eight (28) days before the effective date fixed in the ordinance, and the last publication shall be made not less than seven (7) days before such date. If no newspaper is published in the municipality, then notice shall be given by publishing the ordinance for the required time in some newspaper published in the same or an adjoining county having a general circulation in the municipality. A copy of the ordinance shall also be posted at three (3) public places in the municipality for a period of at least twenty-one (21) days during the time of its publication in a newspaper. The publication of the ordinance may be made as provided in Section 21-17-19. Proof of publication must also be furnished to the Chair of the State Board of Election Commissioners.

(3) If a city council or board of aldermen or other governing authority of any municipality adopts an ordinance to abolish municipal election commissioners in the municipality's county and authorize county election commissioners to conduct the municipal election commissioners' duties, the county election commissioners shall conduct all of the duties of the municipal election commissioners including, but not limited to:

(a) Canvass the results of bond elections in a municipality;

(b) Canvass the returns of special and general elections for mayor and councilmen and within five (5) days after any special or general election, deliver to each person receiving the highest number of votes a certificate of election;

(c) Certify to the Secretary of State the name or names of the person or persons elected at special and general elections within ten (10) days after any special or general election;

(d) Revise the primary pollbooks for municipalities at the time and in the manner and in accordance with the laws now fixed and in force for revising pollbooks, except they shall not remove from the pollbook any person who is qualified to participate in primary elections;

(e) Print the pollbooks that are to be used in municipal elections;

(f) Print and distribute the "official ballots";

(g) Perform the duties of poll managers in the event there is only one (1) election precinct in the municipality;

(h) Perform any of the duties required of the municipal executive committee pursuant to Section 23-15-239 if the municipal executive committee has entered into a written agreement with the municipal clerk or the municipal or county election commission that gives such authorization;

(i) Determine whether each party candidate in the municipal general election is a qualified elector of the municipality, and of the ward if the office sought is a ward office, whether each candidate either meets all other qualifications to hold the office he or she is seeking or presents absolute proof that he or she will, subject to no contingencies, meet all qualifications on or before the date of the general or special election at which he or she could be elected to office, and whether any candidate has been convicted of any felony in a court of this state, or has been convicted on or after December 8, 1992, of any offense in another state which is a felony under the laws of this state, or has been convicted of any felony in a federal court on or after December 8, 1992;

(j) Declare each candidate elected without opposition, if the candidate meets all the qualifications to hold the office as determined pursuant to a review by the commission in accordance with the provisions of paragraph (i) of this subsection (3);

(k) Canvass the returns for municipal elections received from all voting precincts and within ten (10) days after the election, deliver to each person receiving the highest number of votes a certificate of election. If it shall appear that any two (2) or more of the candidates receiving the highest number of votes shall have received an equal number of votes, the election shall be decided by the toss of a coin or by lot, fairly and publicly drawn by the election commissioners;

(*l*) Transmit the statement provided in Section 23-15-611 to the Secretary of State certifying the name or names of the person or persons elected at municipal elections, and such person or persons shall be issued commissions by the Governor;

(m) Receiving the filed document by any person desiring to contest the qualifications of another person who has qualified pursuant to the provisions of Section 23-15-361 as a candidate for municipal office elected on the date designated by law for regular municipal elections that specifically sets forth the grounds of the challenge no later than thirty-one (31) days after the date of the first primary election set forth in Section 23-15-309; and

(n) Perform all other duties with respect to the municipal election prescribed by law.

(4) If the city council or board of aldermen or other governing authority of any municipality does not desire to avail itself of the provisions of the Mississippi Election Code regarding the duties of municipal election commissioners, then nothing in this section shall be construed in any way to affect, alter or modify the existence of those municipal election commissioners now operating under the laws relating to municipal election commissioners provided in the Mississippi Code of 1972. Those municipalities shall continue to enjoy the form of election commissions and the conduct of the respective elections that are now enjoyed by them, and each shall possess all rights, powers, privileges and immunities granted and conferred under the laws

relating to municipal election commissioners provided in the Mississippi Code of 1972.

**HISTORY:**

Derived from 1972 Code § 23-11-13 [Codes, 1942, § 3203-105; Laws, 1972, ch. 490, § 105; Repealed by Laws, 1986, ch. 490, § 345]; En, Laws, 1986, ch. 495, § 59; Laws, 2017, ch. 441, § 42, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment, in (1), divided the former first sentence into the present first and second sentences by deleting "one (1) of whom, in each municipality, shall be designated to have printed and distributed the 'official ballots,' and all of whom" from the end of the first sentence and adding "The municipal election commissioners, in conjunction with the municipal clerk" to the beginning of the second sentence, substituted "poll managers" for "election managers" in the last sentence, and made minor stylistic changes; and added (2) through (4).

## JUDICIAL DECISIONS

### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 21-11-13.

**1.-5. [Reserved for future use.]**

**6. Under former Section 21-11-13.**

Marking of ballots by writing in name of ineligible candidate held not "distinguishing mark" which avoided entire ballot, where voters made honest effort to vote for such candidate, and not to indicate who voted ballots; hence ballots were improperly rejected as to candidates properly on ballots. Wylie v. Cade, 174 Miss. 426, 164 So. 579, 1935 Miss. LEXIS 82 (Miss. 1935).

Municipal election contests are governed by statute relating to election of county officers. Hutson v. Miller, 148 Miss. 783, 114 So. 820, 1927 Miss. LEXIS 88 (Miss. 1927).

The election commissioners appointed by the mayor and board of aldermen, where it does not appear that the municipality contained more than one election precinct, are presumed to be managers of the election. State ex rel. Attorney Gen. v. Ratliff, 108 Miss. 242, 66 So. 538, 1914 Miss. LEXIS 195 (Miss. 1914).

Election contest for office of mayor of city operating under Code chapter was properly brought under this section. Shines v. Hamilton, 87 Miss. 384, 39 So. 1008, 1905 Miss. LEXIS 152 (Miss. 1905).

Where a charter of a municipality provides that the mayor and aldermen shall appoint election commissioners to perform all the duties in respect to municipal elections prescribed by law, to be performed by the county election commissioners where applicable, and after the close of the polls to ascertain the results in the presence of the mayor and at least one alderman who with the commissioners shall certify the returns, the duty of the mayor to certify the returns is ministerial and he may be compelled to do so by mandamus. Bourgeois v. Fairchild, 81 Miss. 708, 33 So. 495, 1902 Miss. LEXIS 191 (Miss. 1902).

## OPINIONS OF THE ATTORNEY GENERAL

There is no specific prohibition against a county executive committee member from serving as a municipal election commissioner, but it would give the appearance of impropriety for a municipal election commissioner to be identified with a particulars group of nominees. 1998 Miss. Op. Att'y Gen. 803.

The statute contains no provision expressly stating that it is applicable to special or private charter municipalities and, therefore, a city charter provision specifying the number of election commissioners controlled over the statute. Artman, Jr., 2001 Miss. Op. Att'y Gen. 177.

A county or municipal election commission may enter a written agreement with a county or municipal party executive committee to perform various duties in connection with a primary election such as training poll workers, appointing poll workers, distributing ballot boxes, having ballots printed, distributing ballots, and receiving and canvassing election returns; however, there is no authority that would allow a county election commission to conduct a municipal election. 2002 Miss. Op. Att'y Gen. 535.

If the increased revenue in a school district's budget was derived solely from the expansion of its ad valorem tax base, there was no violation of subsection (1) of this section; however, an amount is referenced in the ad valorem tax request worksheet as a "new program" was not derived solely from the expansion of the district's ad valorem tax base and, therefore, this increase in dollars must be advertised and the failure to do so requires exclusion of this amount when setting the millage rate to fund the school board's budget. 2002 Miss. Op. Att'y Gen. 536.

## RESEARCH REFERENCES

**Am. Jur.**
25 Am. Jur. 2d, Elections §§ 85, 90, 91.

**CJS.**
29 C.J.S., Elections §§ 207–214.

## § 23-15-223. County registrar shall be circuit court clerk unless found improper; appointment of deputy registrars; liability of registrar for malfeasance or nonfeasance of deputy registrar; computer skills training course.

(1) The State Board of Election Commissioners, on or before the fifteenth day of February succeeding each general election, shall appoint in the several counties registrars of elections, who shall hold office for four (4) years and until their successors shall be duly qualified. The county registrar shall be the clerk of the circuit court, unless the State Board of Election Commissioners finds the circuit clerk to be an improper person to register the names of the electors in the county. The State Board of Election Commissioners shall draft rules and regulations to provide for notice and hearing before removal of the circuit clerk, if notice and a hearing is practicable under the circumstances.

(2) The county registrar is empowered to appoint deputy registrars, with the consent of the board of election commissioners, who may discharge the duties of the registrar.

The clerk of every municipality shall be appointed as such a deputy registrar, as contemplated by the National Voter Registration Act (NVRA).

(3) The county registrar shall not be held liable for any malfeasance or nonfeasance in office by any deputy registrar who is a deputy registrar by virtue of his or her office.

(4) The Secretary of State, in conjunction with the State Board of Community and Junior Colleges, has developed and made available online a computer skills training course for all newly appointed registrars that shall be completed within one hundred eighty (180) days of the commencement of their term of office.

**HISTORY:**
Derived from 1972 Code § 23-5-7 [Codes, 1892, § 3603; 1906, § 4109; Hemingway's 1917, § 6743; 1930, § 6178; 1942, § 3206; Laws, 1900, ch. 75; Laws, 1984, ch. 460, § 1; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 60; Laws, 1988, ch. 350, § 4; Laws, 2009, ch. 400, § 1; Laws, 2017, ch. 441, § 43, eff from and after July 1, 2017.

**Editor's Notes —**
By letter dated July 28, 2009, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2009, ch. 400, § 1.

**Amendment Notes —**
The 2017 amendment designated the first sentence of the former undesignated first paragraph (1), and added the last two sentences; designated the second sentence of the former undesignated first paragraph as the first paragraph of (2), and therein inserted "county"; designated the former undesignated second paragraph as the second paragraph of (2); designated the former undesignated third paragraph (3), and therein substituted "registrar shall not" for "registrar may not"; added (4); and made a gender neutral change.

**Federal Aspects—**
National Voter Registration Act (NVRA) is codified as 52 USCS §§ 20501 et seq.

## JUDICIAL DECISIONS

**1. In general.**

Based on totality of circumstances, proof showed by preponderance of evidence that Mississippi's dual registration requirement and statutory prohibition on removing voter registration books from circuit clerk's office resulted in denial or abridgement of right of black citizens in Mississippi to vote and participate in electorial process. Mississippi State Chapter, Operation Push v. Allain, 674 F. Supp. 1245, 1987 U.S. Dist. LEXIS 10925 (N.D. Miss. 1987).

Circuit clerks are qualified to and capable of determining, where necessity dictates and persons present themselves for deputization, which volunteers should be deputized. Mississippi State Chapter, Operation Push v. Allain, 674 F. Supp. 1245, 1987 U.S. Dist. LEXIS 10925 (N.D. Miss. 1987).

Deputizing all municipal clerks would significantly increase available registration sites to those individuals living in small municipalities which are often distant from most populous areas of county, and there is no legitimate or compelling state interest served by failure to deputize all municipal clerks as deputy registrars. Mississippi State Chapter, Operation Push v. Allain, 674 F. Supp. 1245, 1987 U.S. Dist. LEXIS 10925 (N.D. Miss. 1987).

Plaintiffs who showed that challenged statutes either impinged upon their protected rights to register to vote or burdened organizational efforts to assist prospective voters in registering had standing to sue to challenge Mississippi's dual registration requirement and prohibition on satellite registration as violative of their rights and all persons similarly situated. Mississippi State Chapter, Operation Push v. Allain, 674 F. Supp. 1245, 1987 U.S. Dist. LEXIS 10925 (N.D. Miss. 1987).

## RESEARCH REFERENCES

**Am. Jur.**

25 Am. Jur. 2d, Elections §§ 175, 177, 183-185.

**CJS.**

29 C.J.S., Elections § 64.

## § 23-15-225. Compensation of registrars.

(1) The registrar shall be entitled to such compensation, payable monthly out of the county treasury, which the board of supervisors of the county shall allow on an annual basis in the following amounts:

(a) For counties with a total population of more than two hundred thousand (200,000), an amount not to exceed Twenty-nine Thousand Nine Hundred Dollars ($29,900.00), but not less than Nine Thousand Two Hundred Dollars ($9,200.00).

(b) For counties with a total population of more than one hundred thousand (100,000) and not more than two hundred thousand (200,000), an amount not to exceed Twenty-five Thousand Three Hundred Dollars ($25,300.00), but not less than Nine Thousand Two Hundred Dollars ($9,200.00).

(c) For counties with a total population of more than fifty thousand (50,000) and not more than one hundred thousand (100,000), an amount not to exceed Twenty-three Thousand Dollars ($23,000.00), but not less than Nine Thousand Two Hundred Dollars ($9,200.00).

(d) For counties with a total population of more than thirty-five thousand (35,000) and not more than fifty thousand (50,000), an amount not to exceed Twenty Thousand Seven Hundred Dollars ($20,700.00), but not less than Nine Thousand Two Hundred Dollars ($9,200.00).

(e) For counties with a total population of more than twenty-five thousand (25,000) and not more than thirty-five thousand (35,000), an amount not to exceed Eighteen Thousand Four Hundred Dollars ($18,400.00), but not less than Nine Thousand Two Hundred Dollars ($9,200.00).

(f) For counties with a total population of more than fifteen thousand (15,000) and not more than twenty-five thousand (25,000), an amount not to exceed Sixteen Thousand One Hundred Dollars ($16,100.00), but not less than Nine Thousand Two Hundred Dollars ($9,200.00).

(g) For counties with a total population of more than ten thousand (10,000) and not more than fifteen thousand (15,000), an amount not to exceed Thirteen Thousand Eight Hundred Dollars ($13,800.00), but not less than Eight Thousand Fifty Dollars ($8,050.00).

(h) For counties with a total population of more than six thousand (6,000) and not more than ten thousand (10,000), an amount not to exceed Eleven Thousand Five Hundred Dollars ($11,500.00), but not less than Eight Thousand Fifty Dollars ($8,050.00).

(i) For counties with a total population of not more than six thousand (6,000), an amount not to exceed Nine Thousand Two Hundred Dollars ($9,200.00) but not less than Six Thousand Three Hundred Twenty-five Dollars ($6,325.00).

(j) For counties having two (2) judicial districts, the board of supervisors of the county may allow, in addition to the sums prescribed herein, in its discretion, an amount not to exceed Eleven Thousand Five Hundred Dollars ($11,500.00).

(2) In the event of a reregistration within such county, or a redistricting that necessitates the hiring of additional deputy registrars, the board of supervisors, in its discretion, may by contract compensate the county registrar amounts in addition to the sums prescribed herein.

(3) As compensation for their services in assisting the county election commissioners in performance of their duties in the revision of the voter roll as electronically maintained by the Statewide Elections Management System and in assisting the election commissioners, executive committees or boards of supervisors in connection with any election, the registrar shall receive the same daily per diem and limitation on meeting days as provided for the board of election commissioners as set out in Sections 23-15-153 and 23-15-227 to be paid from the general fund of the county.

(4) In any case where an amount has been allowed by the board of supervisors pursuant to this section, such amount shall not be reduced or terminated during the term for which the registrar was elected.

(5) The circuit clerk shall, in addition to any other compensation provided for by law, be entitled to receive as compensation from the board of supervisors the amount of Two Thousand Five Hundred Dollars ($2,500.00) per year. This payment shall be for the performance of his or her duties in regard to the conduct of elections and the performance of his or her other duties.

(6) The municipal clerk shall, in addition to any other compensation for performance of duties, be eligible to receive as compensation from the municipality's governing authorities a reasonable amount of additional compensation

for reimbursement of costs and for additional duties associated with mail-in registration of voters.

(7) The board of supervisors shall not allow any additional compensation authorized under this section for services as county registrar to any circuit clerk who is receiving fees as compensation for his or her services equal to the limitation on compensation prescribed in Section 9-1-43.

**HISTORY:**

Derived from 1972 Code § 23-5-53 [Codes, 1880, § 116; 1892, § 3622; 1906, § 4129; Hemingway's 1917, § 6763; 1930, § 6195; 1942, § 3223; Laws, 1964, ch. 510, § 1; Laws, 1977, ch. 335; Laws, 1981, ch. 500, § 1; Laws, 1983, ch. 519; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 61; Laws, 1991, ch. 440, § 6; Laws, 1997, ch. 570, § 7; Laws, 2008, ch. 473, § 2; brought forward without change, Laws, 2016, ch. 326, § 4; Laws, 2017, ch. 441, § 44, eff from and after July 1, 2017; brought forward without change, Laws, 2018, ch. 399, § 5, eff from and after July 1, 2018.

**Editor's Notes —**

The United States Attorney General, by letter dated July 30, 1992, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1991, ch. 440, § 6.

Laws of 1997, ch. 570, § 14, provides as follows:

"SECTION 14. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or October 1, 1997, whichever occurs later."

The United States Attorney General, by letter dated September 5, 1997, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1997, ch. 570, § 7.

Laws of 2008, ch. 473, § 4 provides:

"SECTION 4. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or July 1, 2008, whichever occurs later."

On July 31, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 473.

**Amendment Notes —**

The 2017 amendment, in (2), deleted "in its discretion" from the end and inserted it following "board of supervisors"; substituted "voter roll as electronically maintained by the Statewide Elections Management System" for "registration books and the pollbooks of the several voting precincts of the several counties" in (3); and made gender neutral and minor stylistic changes.

The 2018 amendment brought the section forward without change.

## JUDICIAL DECISIONS

**1. Circuit clerk as registrar.**

Since circuit clerks in Mississippi served as county registrars and Miss. Code Ann. § 23-15-225 provided that for their service as county registrar they were to receive an annual salary and a meeting day per diem, both of which were to be paid for the county general fund, the vital role that clerks played in county governance weighed in favor of finding them to be county agents for purposes of 18 U.S.C.S. § 666(d)(1). United States v. Harris, 2007 U.S. Dist. LEXIS 50575 (S.D. Miss. July 11, 2007), aff'd, 296 Fed. Appx. 402, 2008 U.S. App. LEXIS 22020 (5th Cir. Miss. 2008).

## OPINIONS OF THE ATTORNEY GENERAL

Even though county registrars are not entitled to compensation over and above what has been set by their respective boards of supervisors for maintaining extended office hours for registration and absentee balloting purposes, the compensation of a regular county employee who is also a deputy registrar and who is given the additional responsibility of registering voters during extended hours can be increased at the discretion of the board of supervisors. 1992 Miss. Op. Att'y Gen. 957.

County registrars may lawfully receive more than one per diem for the same day for their assistance of certain entities in election activities, provided that the registrar, either personally or through a deputy, actually performs required and necessary duties in assisting each entity. 1992 Miss. Op. Att'y Gen. 957.

Time and work required to transfer the names of registered voters to a newly established automated voter registration system is a single, unique occurrence, and county boards of supervisors are authorized to approve a one time additional payment for the Registrar or some qualified individual designated by the Registrar for performing this task. 1992 Miss. Op. Att'y Gen. 957.

There is no requirement that election commission or executive committees actually be in session and present with registrar in order for registrar to perform ministerial tasks and be entitled to appropriate compensation. 1992 Miss. Op. Att'y Gen. 932.

Miss. Code Section 23-15-225 provides that city clerk of every municipality shall be appointed as deputy registrar. 1993 Miss. Op. Att'y Gen. 263.

In setting election clerk's compensation, governing authorities should take into consideration fact that clerk is required by statute to perform various duties relating to municipal registrar; Miss. Code Section 23-15-225 (6) specifically provides for additional compensation for performance of duties relating to mail-in voter registration. 1993 Miss. Op. Att'y Gen. 263.

It is implicit in this section that circuit clerks may, upon request from the executive committee of the party, assist the executive committee with its duties in the conduct of the election (circuit clerk may receive compensation for services in assisting the election commissioners, executive committees or boards of supervisors in connection with any election); thus, although the circuit clerk may assist the executive committee in the conduct of an election, the duty and responsibility of the election remains with the executive committee and is nondelegable. 1999 Miss. Op. Att'y Gen. 323.

Individual election commissioners may be employed on a part-time basis by the board of supervisors to perform redistricting tasks provided the board determines, consistent with the facts that (1) the work involved is not required to be performed by the registrar or deputy registrar; and (2) the work is over and above the regular statutory duties of the election commissioners. Martin, Jr., 2002 Miss. Op. Att'y Gen. 326.

Circuit clerks may claim the same number of statutory days for assisting county executive committees as they claim for assisting county election commissions. 2006 Miss. Op. Att'y Gen. 191.

### RESEARCH REFERENCES

**Am. Jur.**
25 Am. Jur. 2d, Elections § 177, 183.

## § 23-15-227. Compensation of poll managers.

(1) The poll managers shall be each entitled to Seventy-five Dollars ($75.00) for each election; however, the board of supervisors may, in its discretion, pay the poll managers an additional amount not to exceed Fifty Dollars ($50.00) per election.

(2) The poll manager who shall carry to the place of voting, away from the courthouse, the official ballots, ballot boxes, pollbooks and other necessities, shall be allowed Ten Dollars ($10.00) for each voting precinct for so doing. The poll manager who acts as returning officer shall be allowed Ten Dollars ($10.00) for each voting precinct for that service. If a person who performs the duties described in this subsection uses a privately owned motor vehicle to perform them, he or she shall receive for each mile actually and necessarily traveled in excess of ten (10) miles, the mileage reimbursement rate allowable to federal employees for the use of a privately owned vehicle while on official travel.

(3) The compensation authorized in this section shall be allowed by the board of supervisors, and shall be payable out of the county treasury.

(4) The compensation provided in this section shall constitute payment in full for the services rendered by the persons named for any election, whether

there be one (1) election or issue voted upon, or more than one (1) election or issue voted upon at the same time.

**HISTORY:**

Derived from 1972 Code § 23-5-183 [Codes, 1892, § 3706; 1906, § 4213; Hemingway's 1917, § 6849; 1930, § 6257; 1942, § 3286; Laws, 1932, ch. 298; Laws, 1938, ch. 306; Laws, 1950, ch. 281; Laws, 1960, ch. 452, § 1; Laws, 1966 ch. 614, § 1; Laws, 1970, ch. 511, § 1; Laws, 1973, ch. 401 § 1; Laws, 1975, ch. 497, § 2; Laws, 1979, ch. 487, § 3; Laws, 1983, ch. 510; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 62; Laws, 1987, ch. 499, § 16; Laws, 1988 ch. 402, § 1; Laws, 1995, ch. 446, § 1; Laws, 2007, ch. 434, § 5; Laws, 2013, ch. 366, § 1; brought forward without change, Laws, 2016, ch. 326, § 5; Laws, 2017, ch. 441, § 45, eff from and after July 1, 2017.

**Editor's Notes —**

The United States Attorney General, by letter dated August 4, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment to this section by Laws of 1995, ch. 446, § 1.

On June 15, 2007, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment to this section by Laws of 2007, ch. 434.

The effective date of Chapter 366, Laws of 2013, which amended this section, is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bill was approved, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. For that reason, the Mississippi Attorney General's Office submitted Chapter 366, Laws of 2013, to the United States Attorney General, in order to technically meet the requirements of Section 5 and fulfill the condition in the effective date of the bill, which will allow the bill to take effect.

By letter dated July 17, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 366 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 366, so Chapter 366 became effective from and after July 17, 2013, the date of the United States Attorney General's response letter.

**Amendment Notes —**

The 2017 amendment substituted "poll managers" for "managers and clerks" twice in (1); and in (2), substituted "poll manager" for "manager or other person" twice and substituted "uses a privately owned" for "utilizes a privately owned."

**Cross References —**

Provision that registrars shall receive the same per diem as is provided for board of election commissioners in this section and § 23-15-153, as compensation for assisting the county election commissioners in performance of their duties, see § 23-15-225.

Provision that officers of primary elections shall ordinarily receive only such compensation as is authorized by this section to be paid for similar services of managers, clerks, and returning officer, see § 23-15-301.

Provision that election commissioners shall be compensated for services rendered with respect to contests of primary elections in the manner provided for in this section, see § 23-15-939.

## OPINIONS OF THE ATTORNEY GENERAL

There is no statutory prohibition against individual being independently appointed to serve as pollworker in two different primary elections being conducted simultaneously, although pollworkers are not entitled to additional compensation for working in more than one election on same day. 1992 Miss. Op. Att'y Gen. 465.

In regard to poll workers, Miss. Code Section 23-15-231 provides for appointment of "election managers" by Election Commission; such managers are entitled, under Miss. Code Section 23-15-227, to $50 for each election; such election managers, or poll workers, are therefore employees for purposes of Workers' Compensation coverage. 1993 Miss. Op. Att'y Gen. 133.

Miss. Code Section 23-15-227 provides for $50 per election as compensation of election commissioners, managers, clerks and other persons. 1993 Miss. Op. Att'y Gen. 263.

RESEARCH REFERENCES

**Am. Jur.**
25 Am. Jur. 2d, Elections § 39.

**CJS.**
29 C.J.S., Elections §§ 195, 214.

## § 23-15-229. Compensation of municipal poll managers and other workers.

The compensation for poll managers and other workers in the polling places of a municipality shall be the same as the compensation paid by the county for those services; provided, however, that the governing authorities of a municipality shall not be required to pay any additional compensation authorized by the board of supervisors. The governing authorities of a municipality may, in their discretion, pay clerks and poll managers in the polling places of the municipality an additional amount of compensation not to exceed Fifty Dollars ($50.00) per election.

**HISTORY:**
Derived from 1972 Code § 23-5-184 [Laws, 1973, ch. 346, § 1; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 63; Laws, 1995, ch. 446, § 2; Laws, 2016, ch. 326, § 1; Laws, 2017, ch. 441, § 46, eff from and after July 1, 2017.

**Editor's Notes —**
The United States Attorney General, by letter dated August 4, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment to this section by Laws, 1995, ch. 446, § 2.

**Amendment Notes —**
The 2017 amendment substituted "poll managers and" for "clerks, managers and" in the first sentence; inserted "poll" in the second sentence; and made a minor stylistic change.

**Cross References —**
Compensation for poll managers and other workers in polling places of county, see § 23-15-227.

OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 23-15-229 provides for compensation of municipal clerks, managers and other workers, and states that compensation for clerks, managers and other workers in polling place shall be same as compensation paid by county for such services. 1993 Miss. Op. Att'y Gen. 263.

Even though heading or title of Miss. Code Section 23-15-229 uses terms "municipal clerks, managers and other workers", compensation provided for this statutory section is for "clerks, managers and other workers in the polling places"; this section is clearly referring to poll workers who have historically been designated election clerks and managers, and would not be applicable to municipal clerk. 1993 Miss. Op. Att'y Gen. 263.

RESEARCH REFERENCES

**Am. Jur.**
25 Am. Jur. 2d, Elections § 83.

**CJS.**
29 C.J.S., Elections §§ 195, 214.

## § 23-15-231. Appointment of poll managers; designation of bailiff.

Before every election, the election commissioners shall appoint three (3) persons for each voting precinct to be poll managers, one (1) of whom shall be designated by the election commissioners as election bailiff. For general and special elections, the poll managers shall not all be of the same political party if suitable persons of different political parties can be found in the district. If any person appointed shall fail to attend and serve, the poll managers present, if any, may designate someone to fill his or her place; and if the election commissioners fail to make the appointments or in case of the failure of all those appointed to attend and serve, any three (3) qualified electors present when the polls should be opened may act as poll managers. Provided, however, any person appointed to be poll manager or act as poll manager shall be a qualified elector of the county in which the polling place is located.

**HISTORY:**

Derived from 1972 Code § 23-5-99 [Codes, Hutchinson's 1848, ch. 7, art 5 (4); 1857, ch. 4, art 7; 1871, § 369; 1880, § 133; 1892, § 3643; 1906, § 4150; Hemingway's 1917, § 6784; 1930, § 6214; 1942, § 3243; Laws, 1977 2d Ex Sess, ch. 24, § 5; Laws, 1980, ch. 486, § 1; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 64; Laws, 2017, ch. 441, § 47, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment substituted "election commissioners" for "commissioners of election," and inserted "poll" preceding "manager" and "managers" throughout; substituted "For general and special elections the" for "Such" in the second sentence; and made gender neutral and minor stylistic changes.

**Cross References —**

Appointment of managers in addition to the managers appointed pursuant to this section, see § 23-15-235.

Provision that the number of managers appointed by a county executive committee prior to a primary election shall be the same number as commissioners of election are allowed to appoint pursuant to this section and § 23-15-235, see § 23-15-265.

## JUDICIAL DECISIONS

### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-5-99.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-5-99.**

This section [Code 1942, § 3243] as applied to selection of managers of election from different political parties has no application to an election for the issuance of school bonds. Tedder v. Board of Sup'rs, 214 Miss. 717, 59 So. 2d 329, 1952 Miss. LEXIS 512 (Miss. 1952).

Fact that, pursuant to custom because of size of election district, two sets of election managers conducted the election at the voting place, did not render the votes cast thereat invalid, where one set of managers sat at one end of a table and received the ballots of persons whose names began with the letters "A" through "L", and the other set of managers sat at the other end of the table and received the ballots of persons whose names began with "M" through "Z," each set of managers using a separate ballot box and being assisted by separate clerks, and the ballots were counted and certified to by the respective managers who received them. Simmons v. Crisler, 197 Miss. 547, 20 So. 2d 85, 1944 Miss. LEXIS 319 (Miss. 1944).

Irregularity in appointment of election commissioners and invalidity of so-called official ballots does not affect validity of the election. Shines v. Hamilton, 87 Miss. 384, 39 So. 1008, 1905 Miss. LEXIS 152 (Miss. 1905).

## OPINIONS OF THE ATTORNEY GENERAL

As the only statutory qualification to serve as a pollworker is that one be a qualified elector of the county in which the polling place is located, if an individual is independently appointed to act as a pollworker in more than one primary election being conducted in the same polling place, there is no statutory prohibition against an individual serving in such dual capacity. 1992 Miss. Op. Att'y Gen. 353.

Miss. Code Section 23-15-231 provides for appointment of "election managers" by Election Commission; such managers are entitled, under Miss. Code Section 23-15-227, to $50 for each election; election managers are therefore employees for purposes of Workers' Compensation coverage. 1993 Miss. Op. Att'y Gen. 133.

A registered voter of a county may lawfully be appointed to work at any polling place within that county. 2003 Miss. Op. Att'y Gen. 143.

A court clerk is required to send a copy of an expungement order to the Mississippi Criminal Information Center. 2003 Miss. Op. Att'y Gen. 135.

There is no prohibition against a county election commission appointing members of political party executive committees to serve as poll workers in a special or general election. 2004 Miss. Op. Att'y Gen. 492.

Sections 23-15-231 and 23-15-235 do not provide authority for the board of supervisors to pay pollworkers to be placed at closed voting precincts in order to direct voters to a different voting location. However, Section 19-3-40 gives the board of supervisors the authority to hire an individual to be at a closed polling place and give directions. 2006 Miss. Op. Att'y Gen. 229.

### RESEARCH REFERENCES

**Am. Jur.**

25 Am. Jur. 2d, Elections §§ 84-86.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 1 (notice of appointment as election official).

**CJS.**

29 C.J.S., Elections §§ 193, 194, 207–232.

**Law Reviews.**

Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

## § 23-15-233. Duties of poll managers.

The poll managers shall take care that the election is conducted fairly and agreeably to law, and they shall be judges of the qualifications of electors, and may examine, on oath, any person duly registered and offering to vote touching his or her qualifications as an elector, which oath any of the poll managers may administer.

**HISTORY:**

Derived from 1972 Code § 23-5-101 [Codes, Hutchinson's 1848, ch. 7, art. 5 (14); 1857, ch. 4, art. 9; 1880, § 134; 1892, § 3644; 1906, § 4151; Hemingway's 1917, § 6785; 1930, § 6215; 1942, § 3244; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 65; Laws, 2017, ch. 441, § 48, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment inserted "poll" twice; and made a gender neutral change.

### JUDICIAL DECISIONS

**1. In general.**

Election commission does not have the authority to open ballots certified by election managers as rejected or challenged, and commission cannot override or review decision of election manager who marked ballot as rejected or challenged; duty of commission is merely to canvass sealed ballots to determine if requirements have been met. Misso v. Oliver, 666 So. 2d 1366, 1996 Miss. LEXIS 4 (Miss. 1996).

Only power conferred, and only duty required of election commission, in relation to the canvass of votes, should be to count the votes, based upon returns as made by election managers, and to give certificates to those receiving majority of the votes; election commission should not go beyond or behind the returns, and reject votes, or accept votes previously rejected, or otherwise inquire into validity of conduct of election; election commission has no judicial discretion as to validity of rejected or contested votes. Misso v. Oliver, 666 So. 2d 1366, 1996 Miss. LEXIS 4 (Miss. 1996).

### RESEARCH REFERENCES

**Am. Jur.**
25 Am. Jur. 2d, Elections § 90, 91.

**Law Reviews.**
Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

## § 23-15-235. Appointment of additional poll managers.

In addition to the poll managers appointed pursuant to Section 23-15-231, for the first five hundred (500) registered voters in each voting precinct, the election commissioners may, in their discretion, appoint not more than three (3) persons to serve as poll managers of the election. The election commissioners may, in their discretion, appoint three (3) additional persons to serve as poll managers for each one thousand (1,000) registered voters or fraction thereof in each voting precinct above the first five hundred (500), not to exceed six (6) additional poll managers under this section. Any person appointed as poll manager shall be a qualified elector of the county in which the voting precinct is located.

**HISTORY:**
Derived from 1972 Code § 23-5-103 [Codes, Hutchinson's 1848, ch. 7, art 5 (4); 1857, ch. 4, art 7; 1871, § 369; 1880, § 135; 1892, § 3645; 1906, § 4152; Hemingway's 1917, § 6786; 1930, § 6216; 1942, § 3245; Laws, 1980, ch. 486, § 2; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 66; Laws, 2017, ch. 441, § 49, eff from and after July 1, 2017.

**Amendment Notes —**
The 2017 amendment substituted "election commissioners" for "commissioners of election" throughout; in the first paragraph, inserted "poll" twice and deleted "or clerks" preceding "of the election" in the first sentence, substituted "poll managers" for "clerks" and added "not to exceed six (6) additional poll managers under this section" in the second sentence, and substituted "poll manager" for "clerk" in the last sentence; and deleted the second paragraph, which read: "The restrictions provided for in this section regarding the number of additional managers and clerks that may be appointed by commissioners of election shall not apply to elections conducted by paper ballot prior to January 1, 1989. In elections conducted by paper ballot prior to January 1, 1989, the commissioners of election may appoint as many additional managers and clerks as they may consider necessary to conduct the elections."

**Cross References —**
Provision that the number of poll managers appointed by a county executive committee prior to a primary election shall be the same number as election commissioners are allowed to appoint pursuant to this section and § 23-15-231, see § 23-15-265.

### OPINIONS OF THE ATTORNEY GENERAL

Sections 23-15-231 and 23-15-235 do not provide authority for the board of supervisors to pay pollworkers to be placed at closed voting precincts in order to direct voters to a different voting location. However, Section 19-3-40 gives the board of supervisors the authority to hire an individual to be at a closed polling place and give directions. 2006 Miss. Op. Att'y Gen. 229.

### RESEARCH REFERENCES

**Am. Jur.**
25 Am. Jur. 2d, Elections §§ 84, 85.

**CJS.**
29 C.J.S., Elections §§ 193, 194, 207–214.

**Law Reviews.**

Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

### § 23-15-237. Oath of office for poll managers.

The poll managers shall be sworn by some officer present competent to administer oaths, or each may be sworn by one of the others, faithfully to perform their duties at the election according to law, and not to attempt to guide, aid, direct or influence any voter in the exercise of his or her right to vote, except as expressly allowed by law. The oath required by this section shall be recorded in the receipt book and signed by each poll manager.

**HISTORY:**

Derived from 1972 Code § 23-5-103 [Codes, Hutchinson's 1848, ch. 7, art 5 (4); 1857, ch. 4, art 7; 1871, § 369; 1880, § 135; 1892, § 3645; 1906, § 4152; Hemingway's 1917, § 6786; 1930, § 6216; 1942, § 3245; Laws, 1980, ch. 486, § 2; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 67; Laws, 2017, ch. 441, § 50, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment substitued "poll managers" for "managers and clerks" in the first sentence; added the last sentence; and made a gender neutral change.

### § 23-15-239. Mandatory training of poll managers; single, comprehensive poll manager training program; certified poll managers.

**[Until January 1, 2020, this section shall read as follows:]**

(1) The executive committee of each county, in the case of a primary election, or the election commissioners of each county, in the case of all other elections, in conjunction with the circuit clerk, shall, in the years in which counties conduct an election, sponsor and conduct, not less than five (5) days before each election, not less than four (4) hours and not more than eight (8) hours of poll manager training to instruct poll managers as to their duties in the proper administration of the election and the operation of the polling place. Any poll manager who completes the online training course provided by the Secretary of State shall only be required to complete two (2) hours of in-person poll manager training. No poll manager shall serve in any election unless he or she has received these instructions once during the twelve (12) months immediately preceding the date upon which the election is held; however, nothing in this section shall prevent the appointment of an alternate poll manager to fill a vacancy in case of an emergency. The county executive committee or the election commissioners, as appropriate, shall train a sufficient number of alternates to serve in the event a poll manager is unable to serve for any reason.

(2)(a) If it is eligible under Section 23-15-266, the county executive committee may enter into a written agreement with the circuit clerk or the county election commission authorizing the circuit clerk or the county election commission to perform any of the duties required of the county executive committee pursuant to this section. Any agreement entered into pursuant to this subsection shall be signed by the chair of the county executive committee and the circuit clerk or the chair of the county election commission, as appropriate. The county executive committee shall notify the state executive committee and the Secretary of State of the existence of the agreement.

(b) If it is eligible under Section 23-15-266, the municipal executive committee may enter into a written agreement with the municipal clerk or the municipal election commission authorizing the municipal clerk or the municipal election commission to perform any of the duties required of the municipal executive committee pursuant to this section. Any agreement entered into pursuant to this subsection shall be signed by the chair of the municipal executive committee and the municipal clerk or the chair of the municipal election commission, as appropriate. The municipal executive committee shall notify the state executive committee and the Secretary of State of the existence of the agreement.

(3) The board of supervisors and the municipal governing authority, in their discretion, may compensate poll managers who attend these training sessions. The compensation shall be at a rate of not less than the federal hourly minimum wage nor more than Twelve Dollars ($12.00) per hour. Poll managers shall not be compensated for more than sixteen (16) hours of attendance at the training sessions regardless of the actual amount of time that they attended the training sessions.

(4) The time and location of the training sessions required pursuant to this section shall be announced to the general public by posting a notice thereof at the courthouse and by delivering a copy of the notice to the office of a newspaper having general circulation in the county five (5) days before the date upon which the training session is to be conducted. Persons who will serve as poll watchers for candidates and political parties, as well as members of the general public, shall be allowed to attend the sessions.

(5) Subject to the following annual limitations, the election commissioners shall be entitled to receive a per diem in the amount of One Hundred Dollars ($100.00), to be paid from the county general fund, for every day or period of no less than five (5) hours accumulated over two (2) or more days actually employed in the performance of their duties for the necessary time spent in conducting training sessions as required by this section:

(a) In counties having less than fifteen thousand (15,000) residents according to the latest federal decennial census, not more than five (5) days per year;

(b) In counties having fifteen thousand (15,000) residents according to the latest federal decennial census but less than thirty thousand (30,000) residents according to the latest federal decennial census, not more than eight (8) days per year;

(c) In counties having thirty thousand (30,000) residents according to the latest federal decennial census but less than seventy thousand (70,000) residents according to the latest federal decennial census, not more than ten (10) days per year;

(d) In counties having seventy thousand (70,000) residents according to the latest federal decennial census but less than ninety thousand (90,000) residents according to the latest federal decennial census, not more than twelve (12) days per year;

(e) In counties having ninety thousand (90,000) residents according to the latest federal decennial census but less than one hundred seventy thousand (170,000) residents according to the latest federal decennial census, not more than fifteen (15) days per year;

(f) In counties having one hundred seventy thousand (170,000) residents according to the latest federal decennial census but less than two hundred thousand (200,000) residents according to the latest federal decennial census, not more than eighteen (18) days per year;

(g) In counties having two hundred thousand (200,000) residents according to the latest federal decennial census but less than two hundred twenty-five thousand (225,000) residents according to the latest federal decennial census, not more than nineteen (19) days per year;

(h) In counties having two hundred twenty-five thousand (225,000) residents or more according to the latest federal decennial census, not more than twenty-two (22) days per year.

(6) Election commissioners shall claim the per diem authorized in subsection (5) of this section in the manner provided for in Section 23-15-153(6).

(7)(a) To provide poll manager training, the Secretary of State has developed a single, comprehensive poll manager training program to ensure uniform, secure elections throughout the state. The program includes online training on all state and federal election laws and procedures and voting machine opening and closing procedures.

(b) County election commissioners shall designate one (1) poll manager per precinct, who shall individually access and complete the online training program, including all skills assessments, at least five (5) days before an election. The poll manager shall be defined as a "certified poll manager," and entitled to a "Certificate of Completion" and compensation for the successful completion of the training and skills assessment in the amount of Twenty-five Dollars ($25.00) payable from the Secretary of State. Compensation paid to any poll manager under this paragraph (b) shall not exceed Twenty-five Dollars ($25.00) per calendar year.

(c) Every election held after January 1, 2018, shall have at least one (1) certified poll manager appointed by the county election officials to work in each polling place in the county during each general election.

**[From and after January 1, 2020, this section shall read as follows:]**

(1) The executive committee of each county, in the case of a primary election, or the election commissioners of each county, in the case of all other elections, in conjunction with the circuit clerk, shall, in the years in which counties conduct an election, sponsor and conduct, not less than five (5) days before each election, not less than four (4) hours and not more than eight (8) hours of poll manager training to instruct poll managers as to their duties in the proper administration of the election and the operation of the polling place. Any poll manager who completes the online training course provided by the

Secretary of State shall only be required to complete two (2) hours of in-person poll manager training. No poll manager shall serve in any election unless he or she has received these instructions once during the twelve (12) months immediately preceding the date upon which the election is held; however, nothing in this section shall prevent the appointment of an alternate poll manager to fill a vacancy in case of an emergency. The county executive committee or the election commissioners, as appropriate, shall train a sufficient number of alternates to serve in the event a poll manager is unable to serve for any reason.

(2)(a) If it is eligible under Section 23-15-266, the county executive committee may enter into a written agreement with the circuit clerk or the county election commission authorizing the circuit clerk or the county election commission to perform any of the duties required of the county executive committee pursuant to this section. Any agreement entered into pursuant to this subsection shall be signed by the chair of the county executive committee and the circuit clerk or the chair of the county election commission, as appropriate. The county executive committee shall notify the state executive committee and the Secretary of State of the existence of the agreement.

(b) If it is eligible under Section 23-15-266, the municipal executive committee may enter into a written agreement with the municipal clerk or the municipal election commission authorizing the municipal clerk or the municipal election commission to perform any of the duties required of the municipal executive committee pursuant to this section. Any agreement entered into pursuant to this subsection shall be signed by the chair of the municipal executive committee and the municipal clerk or the chair of the municipal election commission, as appropriate. The municipal executive committee shall notify the state executive committee and the Secretary of State of the existence of the agreement.

(3) The board of supervisors and the municipal governing authority, in their discretion, may compensate poll managers who attend these training sessions. The compensation shall be at a rate of not less than the federal hourly minimum wage nor more than Twelve Dollars ($12.00) per hour. Poll managers shall not be compensated for more than sixteen (16) hours of attendance at the training sessions regardless of the actual amount of time that they attended the training sessions.

(4) The time and location of the training sessions required pursuant to this section shall be announced to the general public by posting a notice thereof at the courthouse and by delivering a copy of the notice to the office of a newspaper having general circulation in the county five (5) days before the date upon which the training session is to be conducted. Persons who will serve as poll watchers for candidates and political parties, as well as members of the general public, shall be allowed to attend the sessions.

(5) Subject to the following annual limitations, the election commissioners shall be entitled to receive a per diem in the amount of One Hundred Dollars ($100.00), to be paid from the county general fund, for every day or

period of no less than five (5) hours accumulated over two (2) or more days actually employed in the performance of their duties for the necessary time spent in conducting training sessions as required by this section:

(a) In counties having less than fifteen thousand (15,000) residents according to the latest federal decennial census, not more than five (5) days per year;

(b) In counties having fifteen thousand (15,000) residents according to the latest federal decennial census but less than thirty thousand (30,000) residents according to the latest federal decennial census, not more than eight (8) days per year;

(c) In counties having thirty thousand (30,000) residents according to the latest federal decennial census but less than seventy thousand (70,000) residents according to the latest federal decennial census, not more than ten (10) days per year;

(d) In counties having seventy thousand (70,000) residents according to the latest federal decennial census but less than ninety thousand (90,000) residents according to the latest federal decennial census, not more than twelve (12) days per year;

(e) In counties having ninety thousand (90,000) residents according to the latest federal decennial census but less than one hundred seventy thousand (170,000) residents according to the latest federal decennial census, not more than fifteen (15) days per year;

(f) In counties having one hundred seventy thousand (170,000) residents according to the latest federal decennial census but less than two hundred thousand (200,000) residents according to the latest federal decennial census, not more than eighteen (18) days per year;

(g) In counties having two hundred thousand (200,000) residents according to the latest federal decennial census but less than two hundred twenty-five thousand (225,000) residents according to the latest federal decennial census, not more than nineteen (19) days per year;

(h) In counties having two hundred twenty-five thousand (225,000) residents or more according to the latest federal decennial census, not more than twenty-two (22) days per year.

(6) Election commissioners shall claim the per diem authorized in subsection (5) of this section in the manner provided for in Section 23-15-153(6).

(7)(a) To provide poll manager training, the Secretary of State has developed a single, comprehensive poll manager training program to ensure uniform, secure elections throughout the state. The program includes online training on all state and federal election laws and procedures and voting machine opening and closing procedures.

(b) County poll managers who individually access and complete the online training program, including all skills assessments, at least five (5) days before an election shall be defined as "certified poll managers," and entitled to a "Certificate of Completion."

(c) At least one (1) certified poll manager shall be appointed by the county election officials to work in each polling place in the county during each general election.

**HISTORY:**

Laws, 1986, ch. 495, § 68; Laws, 1989, ch. 396, § 1; Laws, 1999, ch. 441, § 1; Laws, 2001, ch. 523, § 2; Laws, 2006, ch. 592, § 4; Laws, 2007, ch. 565, § 2; Laws, 2008, ch. 528, § 5; Laws, 2016, ch. 326, § 2; Laws, 2017, ch. 441, § 51, eff from and after July 1, 2017; Laws, 2018, ch. 343, § 1, eff from and after passage (approved March 8, 2018); Laws, 2018, ch. 399, § 3, eff from and after July 1, 2018.

**Joint Legislative Committe Note**

Section 1 of Chapter 343, Laws of 2018, effective from and after passage (approved March 8, 2018), amended this section. Section 3 of Chapter 399, Laws of 2018, effective from and after July 1, 2018 (approved March 19, 2018), also amended this section. As set out above, this section reflects the language of both amendments, pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 14, 2018, meeting of the Committee.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (7)(b) of this section by substituting "one (1) poll manager" for "one (1) poll managers." The Joint Committee ratified the correction at its August 14, 2018, meeting.

**Editor's Notes —**

The United States Attorney General, by letter dated August 4, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment to this section by Laws of 1995, ch. 429, § 1.

On August 2, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 441, § 1.

The United States Attorney General, by letter dated June 20, 2001, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2001, ch. 523.

On June 29, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 592, § 4.

On July 16, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2007, ch. 565.

On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

**Amendment Notes —**

The 2017 amendment provided for two versions of this section; in the version effective until January 1, 2020, substituted "election commissioners" for "commissioners of election" throughout; in (1), deleted the (a) designation from the beginning, rewrote the first sentence, which read: "The executive committee of each county, in the case of a primary election, or the commissioners of election of each county, in the case of all other elections, in conjunction with the circuit clerk, shall sponsor and conduct, not less than five (5) days prior to each election, training sessions to instruct managers as to their duties in the proper administration of the election and the operation of the polling place," added the second sentence, and inserted "poll" twice in the third sentence and once in the last sentence, and deleted (1)(b), which read: "The executive committee of each county, in the case of a primary election, or the commissioners of election of each county, in the case of all other elections, in conjunction with the circuit clerk, shall sponsor and conduct annually an eight-hour training course for managers that meets criteria that the Secretary of State shall prescribe. Managers shall be required to attend this course every four (4) years from August 7, 2008. The Secretary of State shall develop a version of the course that may be taken by managers over the Internet. Training courses, including, but not limited to, online training courses, that meet criteria prescribed by the Secretary of State and are not sponsored or conducted by the executive committee or the commissioners of election, may be utilized to meet the requirements of this paragraph if the training course is approved by the Secretary of State"; inserted "poll" twice in (3); in (5)(h), inserted "or more" and deleted "but less than two hundred fifty thousand (250,000) residents according to the latest federal decennial census" preceding "not more than"; deleted (5)(i) and (j), which provided annual per diem limitations for counties having between 250,000 and 275,000 residents and counties having more than 275,000 residents; added (7); and made gender neutral and minor stylistic changes; in the version effective from and after January 1, 2020, made identical changes in (1) through (7)(a), and amended (7)(b) and (c) as added in the first version.

The first 2018 amendment (ch. 343), effective March 8, 2018, in the version effective until January 1, 2020, in the first sentence of (7)(b), substituted "designate one (1)" for "designate no more than two (2)," and in the second sentence, substituted "manager" for "managers" and "Secretary of State" for "Help Mississippi Vote Fund," and made minor stylistic changes; and in the version effective from and after January 1, 2020, substituted "managers" for "manager" in (7)(b); and made a minor stylistic change.

The second 2018 amendment (ch. 399), in both versions, substituted "One Hundred Dollars ($100.00)" for "Eighty-four Dollars ($84.00)" in the introductory paragraph of (5), and made a minor grammatical change.

**Cross References —**

Monies in "Help Mississippi Vote Fund" expended for compensation paid to any certified poll manager under this section, see § 23-15-169.7.

## JUDICIAL DECISIONS

**1. Relation to other laws.**

Black chairman of a county political party executive committee was guilty of racial discrimination under § 2 of the Voting Rights Act because, inter alia, he prevented poll watchers from challenging the sufficiency of black voters' absentee voter applications and ballots, in derogation of their duties under Miss. Code Ann. § 23-15-239, and for the purpose of diluting the white vote. United States v. Brown, 494 F. Supp. 2d 440, 2007 U.S. Dist. LEXIS 47255 (S.D. Miss. 2007), aff'd, 561 F.3d 420, 2009 U.S. App. LEXIS 4030 (5th Cir. Miss. 2009).

## OPINIONS OF THE ATTORNEY GENERAL

County boards of supervisors have the discretionary authority to compensate qualified electors of the county who are duly appointed to serve as pollworkers in a primary election and attend one or more training sessions conducted by a county party executive committee. 2000 Miss. Op. Att'y Gen. 67.

A county election commission may choose to appoint qualified previously trained individuals who have served in a primary to also serve in the following general election; however, if individuals who were paid for attending one or more training sessions conducted by a party executive committee are appointed by a commission, they would not be eligible for any further compensation for attending another training session. 2000 Miss. Op. Att'y Gen. 67.

Because the terms "poll worker" and "manager" are interchangeable as used in the election statute, therefore, a county board of supervisors has the discretionary authority to compensate poll workers for attending certification classes pursuant to Section 23-15-239 (3). 2003 Miss. Op. Att'y Gen. 33.

## RESEARCH REFERENCES

**Am. Jur.**

25 Am. Jur. 2d, Elections §§ 84, 90, 91.

**CJS.**

29 C.J.S., Elections § 194.

**Law Reviews.**

Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

## § 23-15-240. Appointment of student interns to serve during elections.

(1) The officials in charge of the election in a county or municipality may, in their discretion, appoint not more than two (2) students for each precinct to serve as student interns during elections. To be appointed a student intern a student must:

(a) Be recommended by a principal or other school official, or the person responsible for the student's legitimate home instruction program;

(b) Be at least sixteen (16) years of age at the time of the election for which the appointment is made;

(c) Be a resident of the county or municipality for which the appointment is made;

(d) Be enrolled in a public high school, an accredited private high school or a legitimate home instruction program and be classified as a junior or senior or its equivalent, or be enrolled in a junior college or a college or university; and

(e) Meet any additional qualifications considered necessary by the officials in charge of the election in the county or municipality.

(2)(a) The duties of the student interns appointed pursuant to this section shall be determined by the officials in charge of the election in the county or municipality; however, the duties shall not include:

(i) Determining the qualifications of a voter in case a voter is challenged;

(ii) The discharge of any duties related to affidavit ballots;

(iii) The operation and maintenance of any voting equipment;

(iv) Any duties normally assigned to a bailiff; or

(v) The tallying of votes.

(b) Student interns shall at all times be under the supervision of the poll managers of the election while performing their duties at precincts.

(3) Before performing any duties, student interns shall attend all required training for poll managers of the county or municipality and any additional training considered necessary by the officials in charge of the election in the county or municipality.

(4) As used in this section "officials in charge of the election" means the county or municipal executive committee, as appropriate, in primary elections and the county or municipal election commission, as appropriate, in all other elections.

**HISTORY:**

Laws, 2002, ch. 521, § 1; brought forward without change, Laws, 2002, ch. 590, § 1; Laws, 2017, ch. 441, § 52, eff from and after July 1, 2017.

**Editor's Notes —**

The United States Attorney General, by letter dated July 1, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the addition of this section by Laws of 2002, ch. 521.

The United States Attorney General, by letter dated July 22, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the addition of this section by Laws of 2002, ch. 590, § 1.

**Amendment Notes —**

The 2017 amendment substituted "poll managers" for "managers and clerks" in (2)(b) and (3); and made a minor stylistic change.

### § 23-15-241. Election bailiff to keep peace.

The poll manager designated an election bailiff shall, in addition to his or her other duties, be present during the election to keep the peace and to protect the voting place, and to prevent improper intrusion upon the voting place or interference with the election, and to arrest all persons creating any disturbance about the voting place, and to enable all qualified electors who have not voted, and who desire to vote, to have unobstructed access to the polls for the purpose of voting when others are not voting.

**HISTORY:**

Derived from 1972 Code § 23-5-105 [Codes, Hutchinson's 1848, ch. 7, art 5 (13); 1857, ch. 4, art 6; 1871, § 365; 1880, § 128; 1892, § 3638; 1906, § 4145; Hemingway's 1917, § 6779; 1930, § 6217; 1942, § 3246; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 69; Laws, 2017, ch. 441, § 53, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment inserted "poll" near the beginning; and made a gender neutral change.

### OPINIONS OF THE ATTORNEY GENERAL

People gathering signatures on petitions that are not covered by § 23-17-57(4) may be within 150 feet of the entrance of a polling place but not within 30 feet of any room in which an election is being held; however, it is the duty of the election bailiff to insure that anyone collecting signatures does not, in any manner, impede the progress of voters coming into a polling place to vote. 2002 Miss. Op. Att'y Gen. 28.

### RESEARCH REFERENCES

**Am. Jur.**

25 Am. Jur. 2d, Elections §§ 90, 91.

## § 23-15-243. Selection of election bailiff if none designated.

If the election commissioners fail to designate a poll manager as the bailiff, or if their designee fails to serve, the poll managers may select an election bailiff from among their number.

**HISTORY:**

Derived from 1972 Code § 23-5-107 [Codes, 1857, ch. 4, art 4; 1871, § 366; 1880, § 129; 1892, § 3639; 1906, § 4146; Hemingway's 1917, § 6780; 1930, § 6218; 1942, § 3247; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 70; Laws, 2017, ch. 441, § 54, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment substituted "election commissioners" for "commmissioners of election," inserted "poll" the first time it appears, and substiuted "poll managers" for "managers of election."

### RESEARCH REFERENCES

**Am. Jur.**

25 Am. Jur. 2d, Elections § 85.

**CJS.**

29 C.J.S., Elections §§ 207–214.

## § 23-15-245. Duties of election bailiff; polls to be open and clear.

It shall be the duty of the poll manager designated as bailiff to be present at the voting place, and to take such steps as will accomplish the purpose of his or her appointment, and the poll manager designated as bailiff shall have full power to do so and may summon to his or her aid all persons present at the voting place. A space thirty (30) feet in every direction from the polls, or the room in which the election is held, shall be kept open and clear of all persons except the election officials, individuals present to vote and credentialed poll watchers as defined by Section 23-15-577. The electors shall approach the polls from one (1) direction, line, door or passage, and depart in another as nearly opposite as convenient.

**HISTORY:**

Derived from 1972 Code § 23-5-109 [Codes, 1880, § 130; 1892, § 3640; 1906, § 4147; Hemingway's 1917, § 6781; 1930, § 6219; 1942, § 3248; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 71; Laws, 2017, ch. 441, § 55, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment, in the first sentence, inserted "poll" near the beginning, and substituted "the poll manager designated as bailiff shall have" for "he shall have"; and divided the former second sentence into the second and third sentences, and rewrote the former sentence, which read: "A space thirty (30) feet in every direction from the polls, or the room in which the election is held, shall be kept open and clear of all persons except the election officers and two (2) challengers of good conduct and behavior, selected by each party to detect and challenge illegal voters; and the electors shall approach the polls from one direction, line, door or passage, and depart in another as nearly opposite as convenient."

### OPINIONS OF THE ATTORNEY GENERAL

People gathering signatures on petitions that are not covered by § 23-17-57(4) may be within 150 feet of the entrance of a polling place but not within 30 feet of any room in which an election is being held; however, it is the duty of the election bailiff to insure that anyone collecting signatures does not, in any manner, impede the progress of voters coming into a polling place to vote. 2002 Miss. Op. Att'y Gen. 28.

### RESEARCH REFERENCES

**Am. Jur.**

25 Am. Jur. 2d, Elections §§ 90, 91.
26 Am. Jur. 2d, Elections § 308.

**CJS.**

29 C.J.S., Elections §§ 536, 537.

**Law Reviews.**

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

## § 23-15-247. Ballot boxes.

The election commissioners in each county shall procure, if not already provided, a sufficient number of ballot boxes, which shall be distributed by them to the voting precincts of the county before the time for opening the polls. The boxes shall be securely sealed from the opening of the polls on election day until the polls close on election day; and the box shall be kept by one (1) of the managers, and the manager having the box shall carefully keep it, and neither open it himself or herself nor permit it to be opened, nor permit any person to have any access to it throughout the voting period during an election. The box shall not be removed from the polling building or place after the polls are opened until the polls close and the count is complete. After each election the ballot boxes shall be delivered to the clerk of the circuit court of the county for preservation; and he or she shall keep them for future use, and, when called for, deliver them to the election commissioners.

**HISTORY:**

Derived from 1972 Code § 23-5-111 [Codes, Hutchinson's 1848, ch. 7, art 5 (15); 1857, ch. 4, art 10; 1871, § 364; 1880, § 126; 1892, § 3637; 1906, § 4144; Hemingway's 1917, § 6778; 1930, § 6220; 1942, § 3249; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 72; Laws, 2017, ch. 441, § 56, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment substituted "election commissioners" for "commissioners of election" twice; rewrote the second and third sentences, which read: "The boxes shall be secured by good and substantial locks, and, if an adjournment shall take place after the opening of the polls and before all the votes shall be counted, the box shall be securely locked, so as to prevent the admission of anything into it, or the taking of anything from it, during the time of adjournment; and the box shall be kept by one of the managers and the key by another of the managers, and the manager having the box shall carefully keep it, and neither unlock or open it himself nor permit it to be done, nor permit any person to have any access to it during the time of adjournment. The box shall not be removed from the polling building or place after the polls are opened until the count is complete, if as many as three (3) qualified electors object"; deleted "with the keys thereof" following "shall be delivered" in the last sentence; and made a gender neutral change.

## JUDICIAL DECISIONS

### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-5-111.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-5-111.**

That the ballot boxes provided were not "secured by good and substantial locks" is a mere irregularity not invalidating an election. Barnes v. Ladner, 241 Miss. 606, 131 So. 2d 458, 1961 Miss. LEXIS 380 (Miss. 1961).

The power of the circuit court to issue a writ of mandamus to the circuit clerk to permit inspection of the ballot boxes is necessary, supplemental to and in support of the statutory right of candidate to contest a general or special election. Lopez v. Holleman, 219 Miss. 822, 69 So. 2d 903, 1954 Miss. LEXIS 392 (Miss. 1954).

## RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections § 307.

**CJS.**

29 C.J.S., Elections § 531, 532.

## § 23-15-249. Procedure when pollbooks or ballot boxes not distributed.

The failure to distribute to the different voting places the pollbooks containing the alphabetical list of voters, or the ballot boxes provided for, shall not prevent the holding of an election, but in such case the poll managers shall proceed to hold the election without the books and ballot boxes, and shall provide some suitable substitute for the ballot boxes, and conform as nearly as possible to the law in the reception and disposition of the official ballots.

**HISTORY:**

Derived from 1972 Code § 23-5-113 [Codes, 1880, § 145; 1892, § 3676; 1906, § 4183; Hemingway's 1917, § 6817; 1930, § 6221; 1942, § 3250; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 73; Laws, 2017, ch. 441, § 57, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment inserted "poll" preceding "managers shall proceed."

## RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 342-345, 347-349, 359.

**CJS.**

29 C.J.S., Elections § 575.

### JUDICIAL DECISIONS

**1. In general.**

Public interest exception to mootness did not apply to an unsuccessful candidate's election challenge where although Miss. Code Ann. § 23-15-11 (2015) required voters to vote only in their voting precinct, the poll managers provided a suitable substitute by directing voters to go next door, sign the pollbook, and obtain a receipt before returning to vote, and thus, the votes cast before the pollbooks were delivered to the correct voting location were not illegal under Miss. Code Ann. § 23-15-249. Perkins v. McAdams, 2017 Miss. LEXIS 419, - So. 3d -, Miss. Oct. 19, 2017.

**2.-5. [Reserved for future use.]**

**6. Under former Section 23-5-113.**

That the ballot boxes provided were not "secured by good and substantial locks" is a mere irregularity not invalidating an election. Barnes v. Ladner, 241 Miss. 606, 131 So. 2d 458, 1961 Miss. LEXIS 380 (Miss. 1961).

## § 23-15-251. Duties of poll manager designated to receive and distribute ballots.

The election commissioners, in appointing the poll managers of an election, shall designate one (1) of the poll managers at each voting place to receive and distribute the official ballots, and shall deliver to him or her the proper number of ballots for his or her district not less than one (1) day before the election; and the poll manager receiving the ballots from the election commissioners shall distribute the same to the electors of his or her district in the manner herein provided. It shall be the duty of the designated poll manager for service at a voting place other than the courthouse, to carry to that voting place, on the day before the election, or before 6:00 a.m. on the morning of the election, the ballot box, the pollbook, the blank tally sheets, the blank forms to be used in making returns, the other necessary stationery and supplies and the official printed ballots aforesaid, and all of the same used and unused shall be returned by the designated poll manager to the election commissioners on the day next following the election.

**HISTORY:**

Derived from 1972 Code § 23-5-127 [Codes, 1892, § 3660; 1906, § 4167; Hemingway's 1917, § 6801; 1930, § 6228; 1942, § 3257; Laws, 1968, ch. 571, § 2; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 74; Laws, 2017, ch. 441, § 58, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment substituted "election commissioners" for "commissioners of election" near the beginning of the first sentence and near the end of the last sentence; in the first sentence, inserted "poll" twice, deleted "and cards of instruction" following "proper number of ballots," and inserted "election" following "receiving the ballots from the"; in the second sentence, substituted "the designated poll manager" for "said person so designated as aforesaid," and inserted "or before 6:00 a.m. on the morning of the election" and "designated poll"; and made gender neutral and minor stylistic changes.

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections § 307.

**CJS.**

29 C.J.S., Elections §§ 529, 531, 532, 534.

## § 23-15-253. Poll managers to be furnished stationery and blank forms.

The election commissioners shall furnish to the poll managers at each voting place a sufficient quantity of stationery for use in holding the election, and also blank forms to be used in making returns of the election, including the precinct opening and closing log, the election ballot account form and the electronic vote tally worksheet provided by the Secretary of State's office.

**HISTORY:**

Derived from 1972 Code § 23-5-115 [Codes, 1892, § 3646; 1906, § 4153; Hemingway's 1917, § 6787; 1930, § 6222; 1942, § 3251; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 75; Laws, 2017, ch. 441, § 59, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment rewrote the section, which read: "The commissioners of election shall furnish to the managers at each voting place a sufficient quantity of stationery for use in holding the election, and also blank forms to be used in making returns of the election, including blank tally sheets with printed caption and suitable size and ruling."

**RESEARCH REFERENCES**

**Am. Jur.**

26 Am. Jur. 2d, Elections § 307.

**CJS.**

29 C.J.S., Elections §§ 529.

### § 23-15-255. Voting compartments, shelves and tables; information required to be posted at precinct polling place on election day.

(1) The supervisor of each respective supervisors district shall provide at each election place a sufficient number of voting compartments, shelves and tables for the use of electors, which shall be so arranged that it will be impossible for a voter in one (1) compartment to see another voter who is preparing his or her ballot. The number of voting compartments and shelves or tables shall not be less than one (1) to every two hundred (200) electors in the voting precinct.

(2) The poll managers of each precinct shall publicly post the following information at the precinct polling place on the day of any election:

(a) A sample ballot that will be used at the election;

(b) The hours during which the polling places will be open;

(c) Instructions on how to vote, including how to cast a vote and how to cast an affidavit ballot;

(d) Instructions for persons who have registered to vote by mail and first time voters, if appropriate;

(e) General information on voting rights, including information on the right of an individual to cast an affidavit ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated; and

(f) The consequences under federal and state laws regarding fraud and misrepresentation;

(g) A list of voters in each polling place that have already cast an absentee ballot; and

(h) The acceptable forms of photo identification that may be presented in the polling place.

**HISTORY:**

Derived from 1972 Code § 23-5-117 [Codes, 1892, § 3647; 1906, § 4154; Hemingway's 1917, § 6788; 1930, § 6223; 1942, § 3252; Laws, 1978, ch. 390, § 1; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 76; Laws, 2004, ch. 305, § 14; Laws, 2017, ch. 441, § 60, eff from and after July 1, 2017.

**Editor's Notes —**

Laws of 2004, ch. 305, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the "Mississippi Help America Vote Act of 2002 Compliance Law."

On July 12, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2004, ch. 305, § 14.

**Amendment Notes —**

The 2017 amendment, in (1), inserted "(1)" in the first sentence, and deleted the last sentence, which read: "Each compartment shall be supplied and have posted up in it a card of instructions, and be furnished with other conveniences for marking the ballots"; and in (2), inserted "poll" in the introductory paragraph, deleted "version of the" following "A sample" in (a), deleted "Information the date of the election and" from the beginning of (b), added (g) and (h), and made related stylistic changes; and made a gender neutral change.

**Federal Aspects—**

The Help America Vote Act of 2002 is Act of Oct. 29, 2002, P.L. 107-252, formerly appearing as 42 USCS § 15301 et seq., now codified as 52 USCS § 20901 et seq. For full classification of the Act, consult USCS Tables volumes.

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections § 307.

**CJS.**

29 C.J.S., Elections §§ 533.

## § 23-15-257. Duties of marshal or chief of police in municipal elections.

The marshal or chief of police shall perform, in respect to the municipal elections, all the duties prescribed by law to be performed by the board of supervisors in reference to furnishing voting compartments for state and county elections.

**HISTORY:**

Derived from 1972 Code § 21-11-17 [Codes, 1892, § 3033; 1906, § 3438; Hemingway's 1917, § 5998; 1930, § 2600; 1942, § 3374-67; Laws, 1950, ch. 491, § 67; repealed by Laws, 1986, ch. 495, § 329]; en, Laws, 1986, ch. 495, § 77, eff from and after January 1, 1987.

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections § 225.

**CJS.**

29 C.J.S., Elections § 533.

## § 23-15-259. Authority of boards of supervisors to allow compensation of officers rendering services in registration and elections and reasonable sum to supply voting compartments, tables and shelves.

The boards of supervisors of the several counties are authorized to allow compensation of the officers rendering services in matters of registration and elections, to provide ballot boxes, voter rolls as electronically maintained by the Statewide Elections Management System, and all other things required by law in registration and elections. The boards are also authorized, by order spread upon the minutes of the board setting forth the cost and source of funds therefor, to allow such reasonable sum as may be expended in supplying voting compartments, tables or shelves for use at elections.

**HISTORY:**

Derived from 1972 Code § 23-5-179 [Codes, 1892, § 3704; 1906, § 4211; Hemingway's 1917, § 6847; 1930, § 6255; 1942, § 3284; Laws, 1976, ch. 350, §§ 1, 2; Laws, 1985, ch. 397, § 1; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 78; Laws, 2017, ch. 441, § 61, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment in the first paragraph, substituted "voter rolls as electronically maintained by the Statewide Elections Management System" for "registration and pollbooks" and rewrote the last sentence, which read: "Said boards are also authorized, by order spread upon the minutes of the board setting forth the cost and source of funds therefor, to purchase improved or unimproved property and to construct, reconstruct, repair, renovate and maintain polling places or to pay to private property owners reasonable rental fees when the property is used as a polling place for a period not to exceed the day immediately preceding the election, the day of the election, and the day immediately following the election and to allow such reasonable sum as may be expended in supplying voting compartments, tables or shelves for use at elections"; and deleted the last paragraph, which read: "All facilities owned or leased by the state, county, municipality or school district may be made available at no cost to the board of supervisors for use as polling places to such extent as may be agreed to by the authority having control or custody of such facilities."

### OPINIONS OF THE ATTORNEY GENERAL

Purging of voter rolls of names of persons who have not voted in state, county, or federal election in last four (4) years is not applicable to municipal election commissions; municipal election commissions are required to keep and use suspended or "inactive" list compiled and provided by county election commission in order to remove or restore suspended voters. 1990 Miss. Op. Att'y Gen. 183.

A board of supervisors does not have the authority to pay rental fees for the use of privately owned facilities designated as county polling places for a political party to conduct a caucus. 2004 Miss. Op. Att'y Gen. 169.

A board of supervisors does not have the responsibility to provide or make available the various county polling places within the county precincts for use by a political party for a caucus. However, in the event the board makes space available in public facilities to other organizations, it can make space available on the same basis for conducting caucuses. 2004 Miss. Op. Att'y Gen. 169.

A county board of supervisors may authorize improvements to property to be used as voting precincts owned privately or by a fire protection district provided the board determines that such improvements are necessary and that the value of such improvements does not exceed a reasonable rental amount as predetermined by the board. 2006 Miss. Op. Att'y Gen. 40.

### RESEARCH REFERENCES

**Am. Jur.**

25 Am. Jur. 2d, Elections §§ 83, 177, 183.

**CJS.**

29 C.J.S., Elections §§ 195, 214.

## § 23-15-261. Certification of service as poll managers.

The election commissioners shall, after each election, make out a list of all persons who served as poll managers at the election, designating for what service each is entitled to pay, certify to the correctness of the same, and file it with the clerk of the board of supervisors. An allowance shall not be made to any such officer unless his or her service be so certified.

**HISTORY:**

Derived from 1972 Code § 23-5-181 [Codes, 1892, § 3705; 1906, § 4212; Hemingway's 1917, § 6348; 1930, § 6256; 1942, § 3285; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 79; Laws, 2017, ch. 441, § 62, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment divided the section into two sentences by substituting "supervisors. An" for "supervisors; and an"; in the first sentence, substituted "election commissioners" for "commissioners of election" and "poll managers" for "managers and clerks"; and in the second sentence, made a gender neutral change.

### RESEARCH REFERENCES

**Am. Jur.**

25 Am. Jur. 2d, Elections § 83.

**CJS.**

29 C.J.S., Elections §§ 195, 214.

## § 23-15-263. Duties of county executive committees at primary elections.

(1) Unless otherwise provided in this chapter, the county executive committee at primary elections shall perform all duties that relate to the qualification of candidates for primary elections, print ballots for primary elections, appoint the primary election officers, resolve contests in regard to primary elections, and perform all other duties required by law to be performed by the county executive committee; however, each house of the Legislature shall rule on the qualifications of the membership of its respective body in contests involving the qualifications of such members. The executive committee shall be subject to all the penalties to which county election commissioners are subject, except that Section 23-15-217 shall not apply to members of the county executive committee who seek elective office.

(2) A member of a county executive committee shall be automatically disqualified to serve on the county executive committee, and shall be considered to have resigned therefrom, upon his qualification as a candidate for any elective office. The provisions of this subsection shall not apply to a member of a county executive committee who qualifies as a candidate for a municipal elective office.

(3) The primary election officers appointed by the executive committee of the party shall have the powers and perform the duties, where not otherwise provided, required of such officers in a general election, and any and every act or omission which by law is an offense when committed in or about or in respect to such general elections, shall be an offense if committed in or about or in respect to a primary election; and the same shall be indictable and punishable in the same way as if the election was a general election for the election of state and county officers, except as specially modified or otherwise provided in this chapter.

**HISTORY:**

Derived from 1942 Code § 3105 [Codes, 1906, § 3697; Hemingway's 1917, § 6388; 1930, § 5864; Repealed, 1970, ch. 506, § 33; repealed by Laws, 1986, ch. 495, § 346]; en, Laws, 1986, ch. 495, § 80; Laws, 1989, ch. 483, § 1; Laws, 1993, ch. 528, § 10, eff from and after August 16, 1993 (the date the United States Attorney General interposed no objection to the amendment of this section).

**Editor's Notes —**

The United States Attorney General, by letter dated August 16, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1993, ch. 528, § 10.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Remedies.
3. Illustrative cases.

**1. In general.**
Section 23-15-263, which provides in part that "the county executive committee at primary elections shall discharge the functions imposed on the county election commissioners . . . and shall be subject to all the penalties to which all county election commissioners are subject," incorporates the prohibitions of § 23-15-217, which provides in part that "a commissioner of election of any county shall not be a candidate for any office at any election for which he may have been elected or with reference with which he as acted as such," and both sections were enacted to maintain and preserve the integrity of elections and ballot boxes. Thus, a county executive committee member was prohibited from being a candidate in an election which was conducted while he was a member. Breland v. Mallett, 527 So. 2d 629, 1988 Miss. LEXIS 221 (Miss. 1988).

**2. Remedies.**
Remedial order was proper because it was tailored to specific conduct of a county political party executive committee and its chairman that violated § 2 of the Voting Rights Act, 42 U.S.C.S. § 1973 (reclassified as 52 USCS § 10301), it was not so broad as to deprive the committee and its chairman of their First Amendment rights, and did not prevent the committee from performing its electoral duties under Miss. Code Ann. § 23-15-263(1). United States v. Brown, 561 F.3d 420, 2009 U.S. App. LEXIS 4030 (5th Cir. Miss. 2009).

**3. Illustrative cases.**
Government properly established, for purposes of Fed. R. Civ. P. 52, that a political party executive committee and its chairman violated § 2 of the Voting Rights Act, 42 U.S.C.S. § 1973 (reclassified as 52 USCS § 10301), by intentionally diluting the voting power of white members of the party by obtaining large numbers of defective absentee ballots from black voters, facilitating improper counting of absentee ballots, and permitting improper assistance of black voters, contrary to the requirements of Miss. Code Ann. §§ 23-15-263, 23-15-715, and 23-15-549. United States v. Brown, 561 F.3d 420, 2009 U.S. App. LEXIS 4030 (5th Cir. Miss. 2009).

## OPINIONS OF THE ATTORNEY GENERAL

A member of a municipal party executive committee may be a candidate for county or state office and remain on said municipal committee without violation of statute. 1992 Miss. Op. Att'y Gen. 369.

There is no apparent authority for county board of supervisors to compensate individual members of party executive committee for the work they perform for their party, including holding primary elections in place of county election commissioners. 1992 Miss. Op. Att'y Gen. 549.

It is the duty of the executive committee of the political party to determine whether an individual is in fact qualified for the office sought and whether the individual should be placed on the ballot for the party primary. 1999 Miss. Op. Att'y Gen. 346.

A court-ordered election is not a "special election" for purposes of determining which election officials are responsible for its operation, thus, the responsibility for managing and operating the election lies with the party executive committees, and not the municipal election commission. 2002 Miss. Op. Att'y Gen. 509.

## RESEARCH REFERENCES

**Am. Jur.**
25 Am. Jur. 2d, Elections §§ 90, 91.

## § 23-15-265. Meeting of county executive committee; appointment of poll managers by committee.

(1) The county executive committee of each county shall meet not less than two (2) weeks before the date of any primary election and appoint the poll managers for same, all of whom may be members of the same political party. The number of poll managers appointed by the county executive committee shall be the same number as election commissioners are allowed to appoint pursuant to Sections 23-15-231 and 23-15-235. If the county executive committee fails to meet on the date named, supra, further notice shall be given of the time and place of meeting.

(2)(a) If it is eligible under Section 23-15-266, the county executive committee may enter into a written agreement with the circuit clerk or the county election commission authorizing the circuit clerk or the county election commission to perform any of the duties required of the county executive committee pursuant to this section. Any agreement entered into pursuant to this subsection shall be signed by the chair of the county executive committee and the circuit clerk or the chair of the county election commission, as appropriate. The county executive committee shall notify the state executive committee and the Secretary of State of the existence of the agreement.

(b) If it is eligible under Section 23-15-266, the municipal executive committee may enter into a written agreement with the municipal clerk or the municipal election commission authorizing the municipal clerk or the municipal election commission to perform any of the duties required of the municipal executive committee pursuant to this section. Any agreement entered into pursuant to this subsection shall be signed by the chair of the municipal executive committee and the municipal clerk or the chair of the municipal election commission, as appropriate. The municipal executive committee shall notify the state executive committee and the Secretary of State of the existence of such agreement.

**HISTORY:**

Derived from 1942 Code § 3115 [Codes, 1906, § 3707; Hemingway's 1917, § 6399; 1930, § 5873; Laws, 1962, ch. 565, § 1; repealed, Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; en, Laws, 1986, ch. 495, § 81; Laws, 2001, ch. 523, § 3; Laws, 2017, ch. 441, § 63, eff from and after July 1, 2017.

**Editor's Notes —**

The United States Attorney General, by letter dated June 20, 2001, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2001, ch. 523.

**Amendment Notes —**

The 2017 amendment, in (1), substituted "poll managers" for "managers and clerks" twice and "election commissioners" for "commissioners of election" once; substituted "chair" for "chairman" throughout (2); and made a minor stylistic change.

### RESEARCH REFERENCES

**Am. Jur.**

25 Am. Jur. 2d, Elections § 86.

**CJS.**

29 C.J.S., Elections §§ 215–232.

**Law Reviews.**

Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

## § 23-15-266. Executive committee authorized to enter into agreements regarding conduct of elections if certain criteria met.

A county or municipal executive committee shall be eligible to enter into written agreements with a circuit or municipal clerk or a county or municipal election commission as provided for in Section 23-15-239(2), 23-15-265(2), 23-15-267(4), 23-15-333(4), 23-15-335(2) or 23-15-597(2), only if the political party with which such county or municipal executive committee is affiliated:

(a) Has cast for its candidate for Governor in the last two (2) gubernatorial elections ten percent (10%) of the total vote cast for governor; or

(b) Has cast for its candidate for Governor in three (3) of the last five (5) gubernatorial elections twenty-five percent (25%) of the total vote cast for Governor.

**HISTORY:**

Laws, 2001, ch. 523, § 1, eff June 20, 2001 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section).

**Joint Legislative Committee Note —**

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the introductory paragraph. The word "Sections" was changed to "Section" preceding "23-15-239(2), 23-15-265(2), 23-15-267(4), 23-15-333(4), 23-15-335(2) or 23-15-597(2)." The Joint Committee ratified the correction at its August 5, 2008, meeting.

**Editor's Notes —**

The United States Attorney General, by letter dated June 20, 2001, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 2001, ch. 523.

### OPINIONS OF THE ATTORNEY GENERAL

Agreements between an election commission and a party executive committee as authorized by the statute for the performance of one or more of various duties, such as training poll workers, appointing poll workers, distributing ballot boxes, having ballots printed, distributing ballots, and/or receiving and canvassing election returns, in connection with primary elections may contain provisions whereby the executive committee agrees to compensate commissioners. 2001 Miss. Op. Att'y Gen. 638.

## § 23-15-267. Primary election ballot boxes; penalty for failure to deliver ballot boxes.

(1) The ballot boxes provided by the election commissioners in each county shall be used in primary elections, and the county executive committees shall distribute them to the voting precincts of the county before the time for opening the polls, in the same manner, as near as may be, as that provided for in general elections.

(2) The boxes shall be securely sealed and locked beginning at the start of voting on election day until the end of voting on election day; and the box shall be kept by one (1) of the poll managers, and the poll manager having the box shall carefully keep it, and neither open it himself or herself nor permit it to be done, nor permit any person to have any access to it throughout voting during

election day. The box shall not be removed from the polling place after the polls are open until the polls close and the count is completed.

(3) After each election, the ballot boxes shall be delivered to the clerk of the circuit court of the county for preservation; and he or she shall keep them for future use, and, when called for, deliver them to the election commissioners.

(4)(a) If it is eligible under Section 23-15-266, the county executive committee may enter into a written agreement with the circuit clerk or the county election commission authorizing the circuit clerk or the county election commission to perform any of the duties required of the county executive committee pursuant to this section. Any agreement entered into pursuant to this subsection shall be signed by the chair of the county executive committee and the circuit clerk or the chair of the county election commission, as appropriate. The county executive committee shall notify the State Executive Committee and the Secretary of State of the existence of such agreement.

(b) If it is eligible under Section 23-15-266, the municipal executive committee may enter into a written agreement with the municipal clerk or the municipal election commission authorizing the municipal clerk or the municipal election commission to perform any of the duties required of the municipal executive committee pursuant to this section. Any agreement entered into pursuant to this subsection shall be signed by the chair of the municipal executive committee and the municipal clerk or the chair of the municipal election commission, as appropriate. The municipal executive committee shall notify the State Executive Committee and the Secretary of State of the existence of such agreement.

(5) The person, or persons, whose duty it is to comply with the provisions of this section and who shall fail, or neglect, from any cause, to deliver the boxes or any of them as herein provided shall, upon conviction, be fined not less than Two Hundred Dollars ($200.00) and be imprisoned in the county jail of the residence of the person, or persons, who violates any of the provisions of this section, for a period of not less than thirty (30) days or more than six (6) months, and fined not more than Five Hundred Dollars ($500.00).

**HISTORY:**

Derived from 1942 Code § 3126 [Codes, 1906, § 3712; Hemingway's 1917, § 6404; 1930, § 5884; Laws, 1910, ch. 208; repealed, Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; en, Laws, 1986, ch. 495, § 82; Laws, 2001, ch. 523, § 4; Laws, 2017, ch. 441, § 64, eff from and after July 1, 2017.

**Editor's Notes —**

The United States Attorney General, by letter dated June 20, 2001, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2001, ch. 523.

**Amendment Notes —**

The 2017 amendment substituted "election commissioners" for "commissioners of election" in (1); rewrote (2), which read: "If an adjournment shall take place after the polls are open and before all votes are counted, the ballot box shall be securely locked so as to prevent the admission into it or the taking of anything from it during the time of adjournment; and the box shall be kept by one of the managers, and the key by another of the managers, and the manager having the box shall carefully keep it, and neither undertake to open it himself or permit it to be done, or to permit any person to have access to it during the time of adjournment. The box shall not be removed from the polling building or place after the polls are open until the count is completed if as many as three (3) electors qualified to vote at the election object"; rewrote (3), which read: "After each election, the ballot boxes of those provided by the regular commissioner of election shall be delivered, with the keys thereof immediately and as soon thereafter as possible, and without delay to the clerk of the circuit court of the county"; and made gender neutral and minor stylitic changes.

### JUDICIAL DECISIONS

**1. Irregularities warranting special election.**

Failure to secure ballot boxes under Miss. Code Ann. § 23-15-911 and the lack of control over the boxes were substantial irregularities that warranted a special election because they were radical departures from Mississippi election law. Waters v. Gnemi, 907 So. 2d 307, 2005 Miss. LEXIS 321 (Miss. 2005).

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 307, 350, 359.

**Lawyers' Edition.**

Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L. Ed. 2d 1960.

## § 23-15-269. Repealed.

Repealed by Laws of 2017, ch. 441, § 193, effective on or before July 1, 2017.

§ 23-15-269. [Derived from 1972 Code § 23-5-161 [Codes, 1892, § 3669; 1906, § 4176; Hemingway's 1917, § 6810; 1930, § 6246; 1942, § 3275; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 83, eff from and after January 1, 1987.]

**Editor's Notes —**

Former § 23-15-269 provided the penalties for an election commissioner, or any other officer or person acting as such, or performing election duty, who willfully refused or knowingly failed to perform any duty required of him or her by the election laws. For present provisions relating to refusal or neglect to perform duties imposed on election commissioners or registrars by this chapter, see § 23-15-93.

## § 23-15-271. Election integrity assurance committee.

(1) The state executive committee of any political party authorized to conduct political party primaries shall form an election integrity assurance committee for each congressional district. The state executive committee shall appoint three (3) of its members to each congressional district election integrity assurance committee. The members so appointed shall be residents of the congressional district for which the election integrity assurance committee is formed. The state executive committee shall name a chair and a secretary from among the members of each committee. The state executive committee shall provide to each circuit and municipal clerk a list of the members of the congressional district integrity assurance committee for the congressional district in which the county or municipality of the clerk is located.

(2) If within sixty (60) days of an election, a county executive committee or a municipal executive committee fails to attend training or perform in a timely manner any of the duties specified in Sections 23-15-239, 23-15-265, 23-15-267, 23-15-333, 23-15-335 and 23-15-597 and there is no written agreement in place

between the county or municipal executive committee and the county or municipal election commission or the circuit or municipal clerk pursuant to such sections, or there is such an agreement in place and it is not being executed, the circuit or municipal clerk shall notify the chair and secretary of the congressional district election integrity assurance committee or the chair of the state executive committee of such failure and call upon them to take immediate and appropriate action to ensure that such duties are performed in order to secure the orderly conduct of the primary. Upon receiving the notice, the election integrity assurance committee shall be responsible for conducting any required training and shall be authorized to contract on behalf of the county or municipal executive committee with the county or municipal election commission or the circuit or municipal clerk for the conduct of the primary election.

(3) Nothing in this section shall be construed to authorize the state executive committee or a congressional district election assurance committee to conduct primaries.

**HISTORY:**

Laws, 2001, ch. 472, § 1; Laws, 2017, ch. 441, § 65, eff from and after July 1, 2017.

**Editor's Notes —**

The United States Attorney General, by letter dated June 20, 2001, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2001, ch. 472.

**Amendment Notes —**

The 2017 amendment, in (2), inserted "within sixty (60) days of an election" and "attend training or" and substituted "municipal clerk shall notify" for "municipal clerk may notify" in the first sentence, deleted the former second sentence, which read: "Such notification may occur on the last day by which the duties are required to be performed or at such time as the circuit or municipal clerk believes such notification is necessary for the orderly administration of the primary," and added the last sentence; and made gender neutral and minor stylistic changes.

## ARTICLE 9.

## SUPERVISOR'S DISTRICTS AND VOTING PRECINCTS.

Sec.

23-15-281. Fixing supervisors districts, voting precincts and voting places; purchase of property and construction, repair, renovation, maintenance, etc. of polling places; availability of facilities for use as polling place.

23-15-283. Alteration of boundaries.

23-15-285. Entry of boundaries and alterations thereto on minutes of board of supervisors; limit on number of voters within each precinct or ballot box.

### § 23-15-281. Fixing supervisors districts, voting precincts and voting places; purchase of property and construction, repair, renovation, maintenance, etc. of polling places; availability of facilities for use as polling place.

(1) Each county shall be divided into supervisors districts, which shall be the same as those for the election of members of the board of supervisors, and may be subdivided thereafter into voting precincts; and there shall be only one (1) voting place in each voting precinct. Provided, however, that such bound-

aries, if altered, shall conform to visible natural or artificial boundaries such as streets, highways, railroads, rivers, lakes, bayous or other obvious lines of demarcation except county lines and municipal corporate limits. The board of supervisors shall notify the Office of the Secretary of State of the boundary of each supervisors district and voting precinct as then fixed and shall provide the office a legal description and a map of each supervisors district and voting precinct and shall indicate the voting place in each such district. The board of supervisors shall also ensure the legal description and map of each supervisors district is available in the circuit clerk's office for public inspection.

(2) The board of supervisors is authorized, by order spread upon the minutes of the board setting forth the cost and source of funds therefor, to purchase improved or unimproved property and to construct, reconstruct, repair, renovate and maintain polling places, or to pay to private property owners reasonable rental fees when the property is used as a polling place for a period not to exceed the day immediately preceding the election, the day of the election, and the day immediately following the election. On or before May 1, 2019, the county board of supervisors shall ensure each polling place is accessible to all voters, structurally sound, capable of providing air conditioning and heating and compliant with the Americans with Disabilities Act.

(3) All facilities owned or leased by the state, county, municipality, or school district may be made available at no cost to the board of supervisors for use as polling places to such extent as may be agreed to by the authority having control or custody of these facilities.

**HISTORY:**

Derived from 1972 Code § 23-5-9 [Codes, 1880, § 102; 1892, § 3604; 1906, § 4100; Hemingway's 1917, § 6744; 1930, § 6179; 1942, § 3207; Laws, 1980, ch. 425 § 2; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 84; Laws, 2017, ch. 441, § 66, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment, in (1), deleted "but the supervisors districts, voting precincts and voting places as now fixed in each county shall remain until altered" from the end of the first sentence, and deleted "no later than April 1, 1987" following "The board of supervisors" in the third sentence, and added the last sentence; added (2) and (3); and made minor stylistic changes.

**Cross References —**

Boards of supervisors generally, see §§ 19-3-1 et seq.

## JUDICIAL DECISIONS

### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-5-9.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-5-9.**

Pressing shop located across street and about 100 feet from a store designated by the county board of supervisors as the voting place in the district, was the proper voting place and the votes cast thereat were valid, where the owner and operator of the store informed one of the election commissioners a day or two before the election that the store could not be used as a voting place, whereupon, it being too late for a special meeting of the board for designating another voting place, the commissioner directed the election managers to hold the election at the pressing shop. Simmons v. Crisler, 197 Miss. 547, 20 So. 2d 85, 1944 Miss. LEXIS 319 (Miss. 1944).

Fact that pursuant to custom because of size of election district two sets of election managers conducted the election at the voting place instead of one set, did not render the votes cast thereat invalid, where one set of managers sat at one end of a table and received the ballots of persons whose names began with the letters "A" through "L," and the other set of managers sat at the other end of the table and received the ballots of persons whose names began with "M" through "Z," each set of managers using a separate ballot box and being assisted by separate clerks, and the ballots were counted and certified to by the respective managers who received them. Simmons v. Crisler, 197 Miss. 547, 20 So. 2d 85, 1944 Miss. LEXIS 319 (Miss. 1944).

### OPINIONS OF THE ATTORNEY GENERAL

Both Democratic and Republican primaries are to be held at regularly designated polling place in each precinct; there is no prescribed distance by which primaries of different parties must be separated. 1992 Miss. Op. Att'y Gen. 465.

### RESEARCH REFERENCES

**Am. Jur.**
25 Am. Jur. 2d, Elections §§ 8 et seq.

**CJS.**
29 C.J.S., Elections §§ 137–139.

## § 23-15-283. Alteration of boundaries.

(1) The board of supervisors shall have power to alter the boundaries of the supervisors districts, voting precincts and the voting place therein. If the board of supervisors orders a change in the boundaries, they shall notify the election commissioners, who shall at once cause the voter rolls as electronically maintained by the Statewide Elections Management System of voting precincts affected by the order to be changed to conform to the change so as to contain only the names of the qualified electors in the voting precincts as made by the change of boundaries. Upon the order of change in the boundaries of any voting precinct or the voting place therein, the board of supervisors shall notify the Office of the Secretary of State and provide the Office of the Secretary of State a legal description and a map of any boundary change. No change shall be implemented or enforced until the requirements of this section have been met.

(2) Only officials certified by the Secretary of State shall be authorized to implement boundary line changes in the Statewide Elections Management System. The training and certification required under this subsection (2) shall be available to the circuit clerk, county election commissioners or any other individual designated by the board of supervisors to be responsible for implementing boundary line changes into the Statewide Elections Management System.

(3) Any governmental entity authorized to adopt, amend or change boundary lines shall immediately forward all changed boundary lines to the appropriate circuit clerk, who shall, if authorized under subsection (2), implement the boundary line changes in the Statewide Elections Management System. If the circuit clerk is not the appropriate person to implement the boundary line changes, the clerk shall immediately forward a copy of all materials to the appropriate person. Copies of any boundary line changes within the county shall be maintained in the office of the circuit clerk and made available for public inspection. No change shall be implemented or enforced until the requirements of this section have been met.

**HISTORY:**

Derived from 1972 Code § 23-5-11 [Codes, 1880, § 110; 1892, § 3605; 1906, § 4111; Hemingway's 1917, § 6745; 1930, § 6180; 1942, § 3208; Laws, 1980, ch. 425, § 3; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 85; Laws, 2008, ch. 528, § 6; Laws, 2017, ch. 441, § 67, eff from and after July 1, 2017.

**Editor's Notes —**

On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

**Amendment Notes —**

The 2017 amendment, in the second sentence of (1), substituted "election commissioners" for "commissioners of election" and "voter rolls as electronically maintained by the Statewide Elections Management System" for "registration books"; and added (2) and (3).

## JUDICIAL DECISIONS

### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-5-11.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-5-11.**

Changes by the City of Canton, Mississippi in the locations of polling places and in the municipal boundaries through annexations of adjacent areas were within the requirement of § 5 of the Voting Rights Act of 1965 (42 USC § 1973c [now 52 USCS § 10304]) that states or political subdivisions covered by the Act must obtain approval of voting procedures different from those in effect on November 1, 1964, by obtaining a declaratory judgment as to the nondiscriminatory purpose and effect of the changes from the Federal District Court for the District of Columbia, or by submitting the proposed changes to the United States Attorney General. Perkins v. Matthews, 400 U.S. 379, 91 S. Ct. 431, 27 L. Ed. 2d 476, 1971 U.S. LEXIS 93 (U.S. 1971).

Pressing shop located across street and about 100 feet from a store designated by the county board of supervisors as the voting place in the district, was the proper voting place and the votes cast thereat were valid, where the owner and operator of the store informed one of the election commissioners a day or two before the election that the store could not be used as a voting place, whereupon, it being too late for a special meeting of the board for designating another voting place, the commissioner directed the election managers to hold the election at the pressing shop. Simmons v. Crisler, 197 Miss. 547, 20 So. 2d 85, 1944 Miss. LEXIS 319 (Miss. 1944).

Fact that pursuant to custom because of size of election district two sets of election managers conducted the election at the voting place instead of one set, did not render the votes cast thereat invalid, where one set of managers sat at one end of a table and received the ballots of persons whose names began with the letters "A" through "L," and the other set of managers sat at the other end of the table and received the ballots of persons whose names began with "M" through "Z," each set of managers using a separate ballot box and being assisted by separate clerks, and the ballots were counted and certified to by the respective managers who received them. Simmons v. Crisler, 197 Miss. 547, 20 So. 2d 85, 1944 Miss. LEXIS 319 (Miss. 1944).

The commissioners of election, under previous statutes, alone had power to change the election districts, and the change of the boundaries of the supervisor's district did not alter the election district. Perkins v. Carraway, 59 Miss. 222, 1881 Miss. LEXIS 108 (Miss. 1881).

## OPINIONS OF THE ATTORNEY GENERAL

Individual election commissioners may be employed on a part-time basis by the board of supervisors to perform redistricting tasks provided the board determines, consistent with the facts that (1) the work involved is not required to be performed by the registrar or deputy registrar; and (2) the work is over and above the regular statutory duties of the election commissioners. Martin, Jr., 2002 Miss. Op. Att'y Gen. 326.

Failure to file a map or description of the new districts for a county with the Secretary of State's office does not prohibit the circuit clerk and/or the election commission from implementing the new supervisor, school board, and justice court election district. 2003 Miss. Op. Att'y Gen. 387.

### § 23-15-285. Entry of boundaries and alterations thereto on minutes of board of supervisors; limit on number of voters within each precinct or ballot box.

The board of supervisors shall cause an entry to be made on the minutes of the board at some meeting, as early as convenient, defining the boundaries of the several supervisors districts and voting precincts in the county, and designating the voting place in each voting precinct; and as soon as practicable after any change is made in any supervisors district, voting precinct or any voting place, the board of supervisors shall cause the change to be entered on the minutes of the board in such manner as to be easily understood. The changed boundaries shall conform to visible natural or artificial boundaries such as streets, highways, railroads, rivers, lakes, bayous or other obvious lines of demarcation, with the exception of county lines and municipal corporate limits.

No voting precinct shall have more than five hundred (500) qualified electors residing in its boundaries. Subject to the provisions of this section, each board of supervisors of the various counties of this state shall as soon as practical after January 1, 1987, alter or change the boundaries of the various voting precincts to comply herewith and shall from time to time make such changes in the boundaries of voting precincts so that there shall never be more than five hundred (500) qualified electors within the boundaries of the various voting precincts of this state; provided further, this limitation shall not apply to voting precincts that are so divided, alphabetically or otherwise, so as to have less than five hundred (500) qualified electors in any one (1) box within a voting precinct. However, the limitation of five hundred (500) qualified electors to the voting precinct shall not apply to voting precincts in which voting machines are used at all elections held in that voting precinct. No change in any supervisors district or voting precinct shall take effect less than thirty (30) days before the qualifying deadline for the office of county supervisor. Any change in any boundary of a supervisors district or voting precinct that is approved under the Voting Rights Act of 1965 less than thirty (30) days before such qualifying deadline shall be effective only for an election for county supervisor held in a year following the year in which such change is approved under the Voting Rights Act of 1965. Provided, however, that, with the exception of county lines and municipal corporate limits, such altered boundaries shall conform to visible natural or artificial boundaries such as streets, highways, railroads, rivers, lakes, bayous or other obvious lines of demarcation.

**HISTORY:**

Derived from 1972 Code § 23-5-13 [Codes, 1880, § 103; 1892, § 3606; 1906, § 4112; Hemingway's 1917, § 6746; 1930, § 6181; 1942, § 3209; Laws, 1964, ch. 509, § 1; Laws, 1980, ch. 425, § 4; repealed by Laws, 1986, ch. 495,

§ 335]; en, Laws, 1986, ch. 495, § 86; Laws, 2012, ch. 353, § 1; Laws, 2017, ch. 441, § 174, eff from and after July 1, 2017.

**Editor's Notes —**

By letter dated October 5, 2012, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Chapter 353, Laws of 2012.

**Amendment Notes —**

The 2017 amendment made a minor stylistic change in the first paragraph.

### JUDICIAL DECISIONS

#### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-5-13.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-5-13.**

Pressing shop located across street and about 100 feet from a store designated by the county board of supervisors as the voting place in the district was the proper voting place and the votes cast thereat were valid, where the owner and operator of the store informed one of the election commissioners a day or two before the election that the store could not be used as a voting place, whereupon, it being too late for a special meeting of the board for designating another voting place, the commissioner directed the election managers to hold the election at the pressing shop. Simmons v. Crisler, 197 Miss. 547, 20 So. 2d 85, 1944 Miss. LEXIS 319 (Miss. 1944).

Fact that pursuant to custom because of size of election district two sets of election managers conducted the election at the voting place instead of one set, did not render the votes cast thereat invalid, where one set of managers sat at one end of a table and received the ballots of persons whose names began with the letters "A" through "L," and the other set of managers sat at the other end of the table and received the ballots of persons whose names began with "M" through "Z," each set of managers using a separate ballot box and being assisted by separate clerks, and the ballots were counted and certified to by the respective managers who received them. Simmons v. Crisler, 197 Miss. 547, 20 So. 2d 85, 1944 Miss. LEXIS 319 (Miss. 1944).

# ARTICLE 11.

# NOMINATIONS.

| Sec. | |
|---|---|
| 23-15-291. | Nomination for state, district, county and county district office to be by primary election. |
| 23-15-293. | Voting for and nomination of candidates for state, state district and legislative offices by counties or parts of counties within the districts. |
| 23-15-295. | Withdrawal of candidate. |
| 23-15-296. | Written notification to Secretary of State. |
| 23-15-297. | Fee required to be paid upon entering race for party nomination. |
| 23-15-299. | Time for payment of fee; written statement to accompany fee; recordation and disbursement of fee; determination of candidate's qualifications; declaration of nominee in single candidate race. |
| 23-15-301. | Payment of election expenses. |
| 23-15-303. | Each political party or organization to hold independent primary election. |
| 23-15-305. | Majority vote required for nomination; run-off elections. |
| 23-15-307. | Nomination as condition of being placed on general election ballot and holding office. |
| 23-15-309. | Nomination for elective municipal office to be made at primary election; fee requirements; determination of candidate's qualifications. |
| 23-15-311. | Payment of municipal primary election expenses. |
| 23-15-313. | Selection of temporary executive committee in municipality not having party executive committee; notice to public; county executive committee to serve as municipal executive committee under certain circumstances; person convicted of felony barred from serving as member of municipal executive committee. |
| 23-15-315. | Publication of notice to public. |

Sec.
23-15-317. Nomination of nominee when vacancy in nomination occurs between primary election and general election; procedure for withdrawal based upon legitimate nonpolitical reason.
23-15-319. Applicability of chapter to municipal primary elections.

### § 23-15-291. Nomination for state, district, county and county district office to be by primary election.

All nominations for state, district, county and county district officers made by the different parties of this state shall be made by primary elections. All primary elections shall be governed and regulated by the election laws of the state in force at the time the primary election is held.

**HISTORY:**

Derived from 1942 Code § 3105 [Codes, 1906, § 3697; Hemingway's 1917, § 6388; 1930, § 5864; repealed, Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; en, Laws, 1986, ch. 495, § 87, eff from and after January 1, 1987.

#### JUDICIAL DECISIONS

**1. Authority of a political party.**

Mississippi law regarding the power to change election procedures supported the position of plaintiffs, the Mississippi Democratic Party and its Executive Committee, that regardless of what actions a political party's executive committee had taken, they could only act when expressly authorized by Miss. Code Ann. § 23-15-291, and the Executive Committee did not have the authority to implement a closed primary with mandatory party registration; thus, although the Executive Committee had not voted to change their qualifications to include membership cards and had not voted to change the primary system to fully closed, the argument by defendants, the Mississippi Governor, Secretary of State, and Attorney General, that the Executive Committee's failure to pass such measures or obtain preclearance from the Department of Justice pursuant to 42 U.S.C.S. § 1973b(b) [now 52 USCS § 10303], was rejected because the Executive Committee did in fact vote to approve the lawsuit challenging the constitutionality of Mississippi's primary system. Miss. State Democratic Party v. Barbour, 491 F. Supp. 2d 641, 2007 U.S. Dist. LEXIS 41908 (N.D. Miss. 2007), rev'd, vacated, 529 F.3d 538, 2008 U.S. App. LEXIS 11395 (5th Cir. Miss. 2008).

#### RESEARCH REFERENCES

**ALR.**

Validity and effect of statutes exacting filing fees from candidates for public office. 89 A.L.R.2d 864.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 199, 223-237.

**CJS.**

29 C.J.S., Elections §§ 293, 319–375.

### § 23-15-293. Voting for and nomination of candidates for state, state district and legislative offices by counties or parts of counties within the districts.

Candidates for state, state district and legislative offices shall be voted for and nominated by all the counties or parts of counties within their respective districts, and all the district nominations shall be under the supervision and control of the state executive committee of the respective political parties, which committees shall discharge in respect to such state district nominations all the powers and duties imposed upon them in connection with nominations of candidates for other state officers.

**HISTORY:**
Derived from 1942 Code § 3147 [Codes, 1906, § 3723; Hemingway's 1917, § 6414; 1930, § 5900; repealed, Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; en, Laws, 1986, ch. 495, § 88; Laws, 2017, ch. 441, § 68, eff from and after July 1, 2017.

**Amendment Notes —**
The 2017 amendment substituted "Candidates for state, state district and legislative offices shall be voted for" for "Candidates for state and state district office, and candidates for legislative offices for districts composed of more than one county or parts of more than one county, shall be voted for" and made a minor stylistic change.

### § 23-15-295. Withdrawal of candidate.

When any person has qualified in the manner provided by law as a candidate for party nomination in any primary election, such person shall have the right to withdraw his or her name as a candidate by giving notice of his or her withdrawal in writing to the secretary of the proper executive committee at any time before the printing of the official ballots, and in the event of such withdrawal the name of the candidate shall not be printed on the ballot. When a candidate for party nomination for a state or district office who has qualified with the state executive committee withdraws as a candidate as is herein set forth after the sample of the official ballot has been approved and certified by the state executive committee the secretary or chair of the State Executive Committee shall forthwith notify the county executive committee of each county affected or involved of the fact of the withdrawal and such notification shall authorize the county executive committees to omit the name of the withdrawn candidate from the ballot if such notification is received before the printing of the ballot. In the case of the withdrawal of any candidate, the fee paid by the candidate shall be retained by the state or county executive committee, as the case may be.

**HISTORY:**
Derived from 1972 Code § 23-1-31 [Codes, 1942, § 3118.7; Laws, 1952, ch. 294; Laws, 1970, ch. 506, § 4; repealed by Laws, 1986, ch. 495, § 331]; en, Laws, 1986, ch. 495, § 89; Laws, 2017, ch. 441, § 175, eff from and after July 1, 2017.

**Amendment Notes —**
The 2017 amendment made gender neutral and minor stylistic changes.

#### RESEARCH REFERENCES

**Am. Jur.**
25 Am. Jur. 2d, Elections §§ 168-171.
26 Am. Jur. 2d, Elections § 206.
9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 46 (petition to compel acceptance of qualifying papers and fee as candidate).

### § 23-15-296. Written notification to Secretary of State.

All political parties registered with the Secretary of State shall notify the Secretary of State in writing within two (2) working days of each qualifying deadline of the name, mailing address and office sought of all candidates for statewide, state district and legislative office who have submitted qualifying papers to the political party on or before the qualifying deadline, and all political parties shall notify the Secretary of State of any such candidate who withdraws his candidacy within two (2) working days of receiving written notice of the withdrawal.

**HISTORY:**

Laws, 1999, ch. 301, § 6; Laws, 2010, ch. 320, § 1, eff July 15, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the addition of this section by Laws of 1999, ch. 301, § 6.

By letter dated July 15, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 320, § 1.

**Cross References —**

Deadlines for payment of the amounts specified in this section and officers to whom such amounts are to be paid, see § 23-15-299.

Provision that petitions requesting that a person be a candidate for office be filed by the date on which candidates for nominations in primary elections are required to pay the fee provided for in this section, see § 23-15-359.

**Federal Aspects—**

Federal election campaigns – disclosure of federal campaign funds, see 52 USCS § 30101 et seq.

Federal election campaigns – general provisions, see 52 USCS § 30141 et seq.

JUDICIAL DECISIONS

**1. Due process.**

Political party violated a candidate's due process because, by not timely telling the candidate the party found the candidate's petition to be put on a primary ballot insufficient or timely answering the candidate's request to reconsider, the party gave the candidate no meaningful chance to be heard when the deprivation could be prevented, as the deadline for overseas and military ballots had passed. Wilson v. Hosemann, 185 So. 3d 370, 2016 Miss. LEXIS 95 (Miss. 2016).

### § 23-15-297. Fee required to be paid upon entering race for party nomination.

All candidates upon entering the race for party nominations for office shall first pay to the proper officer as provided for in Section 23-15-299 for each primary election and all independent candidates and special election candidates shall pay to the proper officer as provided for in Section 23-15-299 the following amounts:

(a) Candidates for Governor, One Thousand Dollars ($1,000.00).

(b) Candidates for Lieutenant Governor, Attorney General, Secretary of State, State Treasurer, Auditor of Public Accounts, Commissioner of Insurance, Commissioner of Agriculture and Commerce, State Highway Commissioner and State Public Service Commissioner, Five Hundred Dollars ($500.00).

(c) Candidates for district attorney, State Senator and State Representative, Two Hundred Fifty Dollars ($250.00).

(d) Candidates for sheriff, chancery clerk, circuit clerk, tax assessor, tax collector, county attorney, county superintendent of education and board of supervisors, One Hundred Dollars ($100.00).

(e) Candidates for county surveyor, county coroner, justice court judge and constable, One Hundred Dollars ($100.00).

(f) Candidates for United States Senator, One Thousand Dollars ($1,000.00).

(g) Candidates for United States Representative, Five Hundred Dollars ($500.00).

**HISTORY:**

Derived from 1972 Code § 23-1-33 [Codes, 1906, § 3718; Hemingway's 1917, § 6410; 1930, § 5878; 1942, § 3120; Laws, 1936, ch. 326; Laws, 1962, ch. 566, § 1; Laws, 1970, ch. 508, § 1; repealed by Laws, 1986, ch. 495, § 331]; en, Laws, 1986, ch. 495, § 90; Laws, 1987, ch. 499, § 2; Laws, 1994, ch 564, § 89; Laws, 1996, ch. 301, § 2; Laws, 2016, ch. 380, § 1, eff from and after July 1, 2016.

**Editor's Notes —**

Section 7-7-2, as added by Laws of 1984, chapter 488, § 90, and amended by Laws of 1985, chapter 455, § 14, Laws of 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 89.

On January 25, 1996, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1996, ch. 301, § 2.

**Cross References —**

Deadlines for payment of the amounts specified in this section, and officers to whom such amounts are to be paid, see § 23-15-299.

Provision that petitions requesting that a person be a candidate for office be filed by the date on which candidates for nominations in primary elections are required to pay the fee provided for in this section, see § 23-15-359.

## OPINIONS OF THE ATTORNEY GENERAL

Candidates entering race for party nominations for appellate court judge pay $200 fee to secretary of appropriate state executive committee. 1993 Miss. Op. Att'y Gen. 572.

## RESEARCH REFERENCES

**ALR.**

Validity and effect of statutes exacting filing fees from candidates for public office. 89 A.L.R.2d 864.

**Am. Jur.**

26 Am. Jur. 2d, Elections § 264.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 46 (petition to compel acceptance of qualifying papers and fee as candidate).

**CJS.**

29 C.J.S., Elections §§ 326–329.

### § 23-15-299. Time for payment of fee; written statement to accompany fee; recordation and disbursement of fee; determination of candidate's qualifications; declaration of nominee in single candidate race.

(1)(a) Assessments made pursuant to paragraphs (a), (b) and (c) of Section 23-15-297 shall be paid by each candidate who seeks a nomination in the political party election to the secretary of the state executive committee with which the candidate is affiliated by 5:00 p.m. on March 1 of the year in which the primary election for the office is held or on the date of the qualifying deadline provided by statute for the office, whichever is earlier; however, no such assessments may be paid before January 1 of the year in which the primary election for the office is held. If March 1 or the date of the qualifying deadline provided by statute for the office occurs on a Saturday, Sunday or legal holiday, then the assessments required to be paid by this paragraph (1)(a) shall be paid by 5:00 p.m. on the business day immediately following the Saturday, Sunday or legal holiday.

(b) Assessments made pursuant to paragraphs (a), (b) and (c) of Section 23-15-297 shall be paid by each independent candidate or special election candidate to the Secretary of State by 5:00 p.m. on March 1 of the year in which the primary election for the office is held or on the date of the qualifying deadline provided by statute for the office, whichever is earlier; however, no such assessments may be paid before January 1 of the year in which the primary election for the office is held. If March 1 or the date of the qualifying deadline provided by statute for the office occurs on a Saturday, Sunday or legal holiday, then the assessments required to be paid by this paragraph (1)(b) shall be paid by 5:00 p.m. on the business day immediately following the Saturday, Sunday or legal holiday.

(2)(a) Assessments made pursuant to paragraphs (d) and (e) of Section 23-15-297, shall be paid by each candidate who seeks a nomination in the political party election to the circuit clerk of that candidate's county of residence by 5:00 p.m. on March 1 of the year in which the primary election for the office is held or on the date of the qualifying deadline provided by statute for the office, whichever is earlier; however, no such assessments may be paid before January 1 of the year in which the election for the office is held. If March 1 or the date of the qualifying deadline provided by statute for the office occurs on a Saturday, Sunday or legal holiday, then the assessments required to be paid by this paragraph (2)(a) shall be paid by 5:00 p.m. on the business day immediately following the Saturday, Sunday or legal holiday. The circuit clerk shall forward the fee and all necessary information to the secretary of the proper county executive committee within two (2) business days. No candidate may attempt to qualify with any political party that does not have a duly organized county executive committee, and the circuit clerk shall not accept any assessments paid for nonlegislative offices pursuant to paragraphs (d) and (e) of Section 23-15-297 if the circuit clerk does not have contact information for the secretary of the county executive committee for that political party.

(b) Assessments made pursuant to paragraphs (d) and (e) of Section 23-15-297 shall be paid by each independent candidate or special election candidate to the circuit clerk of that candidate's county of residence by 5:00 p.m. on March 1 of the year in which the primary election for the office is held or on the date of the qualifying deadline provided by statute for the office, whichever is earlier; however, no such assessments may be paid before January 1 of the year in which the primary election for the office is held. If March 1 or the date of the qualifying deadline provided by statute for the office occurs on a Saturday, Sunday or legal holiday, then the assessments required to be paid by this paragraph (2)(b) shall be paid by 5:00 p.m. on the business day immediately following the Saturday, Sunday or legal holiday. The circuit clerk shall forward the fee and all necessary information to the secretary of the proper county election commission within two (2) business days.

(3)(a) Assessments made pursuant to paragraphs (f) and (g) of Section 23-15-297 must be paid by each candidate who seeks a nomination in the political party election to the secretary of the state executive committee with which the candidate is affiliated by 5:00 p.m. sixty (60) days before the presidential preference primary in years in which a presidential preference primary is held; however, no such assessments may be paid before January 1 of the year in which the primary election for the office is held. Assessments made pursuant to paragraphs (f) and (g) of Section 23-15-297, in years when a presidential preference primary is not being held, shall be paid by each candidate who seeks a nomination in the political party election to the secretary of the state executive committee with which the candidate is affiliated by 5:00 p.m. on March 1 of the year in which the primary election for the office is held; however, no such assessments may be paid before January 1 of the year in which the primary election for the office is held. If sixty (60) days before the presidential preference primary in years in which a presidential preference primary is held, March 1, or the date of the qualifying deadline provided by statute for the office occurs on a Saturday, Sunday or legal holiday, then the assessments required to be paid by this paragraph (3)(a) shall be paid by 5:00 p.m. on the business day immediately following the Saturday, Sunday or legal holiday.

(b) Assessments made pursuant to paragraphs (f) and (g) of Section 23-15-297 must be paid by each independent candidate or special election candidate to the Secretary of State by 5:00 p.m. sixty (60) days before the presidential preference primary in years in which a presidential preference primary is held; however, no such assessments may be paid before January 1 of the year in which the primary election for the office is held. Assessments made pursuant to paragraphs (f) and (g) of Section 23-15-297, in years when a presidential preference primary is not being held, shall be paid by each independent candidate or special election candidate to the Secretary of State by 5:00 p.m. on March 1 of the year in which the primary election for the office is held; however, no such assessments may be paid before January 1 of the year in which the primary election for the office is held. If sixty (60) days before the presidential preference primary in years in which a presidential preference primary is held, March 1, or the date of the qualifying deadline provided by statute for the office occurs on a Saturday, Sunday or legal holiday, then the assessments required to be paid by this paragraph (3)(b) shall be paid by 5:00 p.m. on the business day immediately following the Saturday, Sunday or legal holiday.

(4)(a) The fees paid pursuant to subsections (1), (2) and (3) of this section shall be accompanied by a written statement containing the name and address of the candidate, the party with which he or she is affiliated, if applicable, the email address of the candidate, if any, and the office for which he or she is a candidate.

(b) The state executive committee shall transmit to the Secretary of State a copy of the written statements accompanying the fees paid pursuant to subsections (1) and (2) of this section. All copies must be received by the Office of the Secretary of State by not later than 6:00 p.m. on the date of the qualifying deadline; provided, however, the failure of the Office of the Secretary of State to receive such copies by 6:00 p.m. on the date of the qualifying deadline shall not affect the qualification of a person who pays the required fee and files the required statement by 5:00 p.m. on the date of the qualifying deadline. The name of any person who pays the required fee and files the required statement after 5:00 p.m. on the date of the qualifying deadline shall not be placed on the primary election ballot or the general election ballot.

(5) The Secretary of State or the secretary or circuit clerk to whom such payments are made shall promptly receipt for same stating the office for which the candidate making payment is running and the political party with which he or she is affiliated, if applicable, and he or she shall keep an itemized account in detail showing the exact time and date of the receipt of each payment received by him or her and, where applicable, the date of the postmark on the envelope containing the fee and from whom, and for what office the party paying same is a candidate.

(6) The secretaries of the proper executive committee shall hold the funds to be finally disposed of by order of their respective executive committees. The funds may be used or disbursed by the executive committee receiving same to pay all necessary traveling or other necessary expenses of the members of the executive committee incurred in discharging their duties as committee members, and of their secretary and may pay the secretary such salary as may be reasonable. The Secretary of State shall deposit any qualifying fees received from candidates into the Elections Support Fund established in Section 23-15-5.

(7) Upon receipt of the proper fee and all necessary information, the proper executive committee or the Secretary of State, whichever is applicable, shall then determine at the time of the qualifying deadline, unless otherwise provided by law, whether each candidate is a qualified elector of the state, state district, county or county district which they seek to serve, and whether each candidate meets all other qualifications to hold the office he or she is seeking

or presents absolute proof that he or she will, subject to no contingencies, meet all qualifications on or before the date of the general or special election at which he or she could be elected to office. The proper executive committee or the Secretary of State, whichever is applicable, shall determine whether the candidate has taken the steps necessary to qualify for more than one (1) office at the election. The committee or the Secretary of State, whichever is applicable, shall also determine whether any candidate has been convicted of any felony in a court of this state, or has been convicted on or after December 8, 1992, of any offense in another state which is a felony under the laws of this state, or has been convicted of any felony in a federal court on or after December 8, 1992. Excepted from the above are convictions of manslaughter and violations of the United States Internal Revenue Code or any violations of the tax laws of this state unless the offense also involved misuse or abuse of his or her office or money coming into his or her hands by virtue of the office. If the proper executive committee or the Secretary of State, whichever is applicable, finds that a candidate either (a) is not a qualified elector, (b) does not meet all qualifications to hold the office he or she seeks and fails to provide absolute proof, subject to no contingencies, that he or she will meet the qualifications on or before the date of the general or special election at which he or she could be elected, or (c) has been convicted of a felony as described in this subsection, and not pardoned, then the executive committee shall notify the candidate and give the candidate an opportunity to be heard. The executive committee shall mail notice to the candidate at least three (3) business days before the hearing to the address provided by the candidate on the qualifying forms, and the committee shall attempt to contact the candidate by telephone, email and facsimile if the candidate provided this information on the forms. If the candidate fails to appear at the hearing or to prove that he or she meets all qualifications to hold the office subject to no contingencies, then the name of that candidate shall not be placed upon the ballot. If the proper executive committee or the Secretary of State, whichever is applicable, determines that the candidate has taken the steps necessary to qualify for more than one (1) office at the election, the action required by Section 23-15-905, shall be taken.

Where there is but one (1) candidate for each office contested at the primary election, the proper executive committee or the Secretary of State, whichever is applicable, when the time has expired within which the names of candidates shall be furnished shall declare such candidates the nominees.

(8) No candidate may qualify by filing the information required by this section by using the Internet.

**HISTORY:**

Derived from 1942 Code § 3118 [Codes, 1906, § 3715; Hemingway's 1917, § 6407; 1930, § 5876; Laws, 1928, ch. 128; Laws, 1944, ch. 172; Laws, 1947, 1st Ex Sess, ch. 14; Laws, 1948, ch. 307; Laws, 1960, ch. 477; repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346], and § 3121 [Codes, 1930, § 5879; Laws, 1944, ch. 170; Laws, 1947, 1st Ex. Sess. ch 18; Laws, 1962, chs. 566, 567; Laws, 1976, ch. 481, § 2; repealed by Laws, 1986, ch. 495, § 346]; en, Laws, 1986, ch. 495, § 91; Laws, 1987, ch. 499, § 3; **Laws, 2000, ch. 592, § 3;** Laws, 2003, ch. 428, § 1; **Laws, 2006, ch. 574,** § 14; Laws, 2007, ch. 604, § 2; **Laws,** 2016, ch. 380, § 2; Laws, 2017, ch. 441, § 69, eff from and after July 1, 2017.

**Editor's Notes —**

The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 90.

On January 25, 1996, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1996, ch. 301, § 1.

On July 28, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 592.

The United States Attorney General, by letter dated June 9, 2003, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2003, ch. 428, § 1.

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, § 14.

On September 10, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2007, ch. 604.

**Amendment Notes —**

The 2017 amendment added the last sentence of (1)(a), the last sentence of (1)(b), the second and last sentences of (2)(a), the next-to-last sentence of (2)(b), the last sentence of (3)(a) and the last sentence of (3)(b); inserted "the email address of the candidate, if any" in (4)(a); in (7), inserted "at the time of the qualifying deadline, unless otherwise provided by law" in the first sentence, and rewrote the former fifth sentence, which read: "If the proper executive committee or the Secretary of State, whichever is applicable, finds that a candidate either (a) is not a qualified elector, (b) does not meet all qualifications to hold the office he seeks and fails to provide absolute proof, subject to no contingencies, that he or she will meet the qualifications on or before the date of the general or special election at which he or she could be elected, or (c) has been convicted of a felony as described in this subsection, and not pardoned, then the name of such candidate shall not be placed upon the ballot" and divided it into the present fifth, sixth and seventh sentences; and made gender neutral and minor stylistic changes.

**Cross References —**

Provision that, upon entering a race for a party nomination for office, a candidate shall pay a specified sum to the officer designated in this section, see § 23-15-297.

Provision that fees which are received from candidates for nominations to municipal office and which are paid over to a municipal executive committee may be used in the same manner as is allowed in this section in regard to other executive committees, see § 23-15-313.

## JUDICIAL DECISIONS

### ANALYSIS

1. Residency not established.
2. Illustrative cases.

**1. Residency not established.**

Candidate and his wife claimed that they were residents of the judicial district for which the candidate sought office, however the candidate and his wife owned two homes and the record revealed that the candidate and his wife spent five days a week at their second home, which was located outside of the judicial district; the candidate was therefore unqualified to run for office in the judicial district. Garner v. State Democratic Exec. Comm., 956 So. 2d 906, 2007 Miss. LEXIS 327 (Miss. 2007).

Candidate was not qualified to run for the House of Representatives under Miss. Code Ann. § 23-15-299(7) because he had not lived in the district for two years prior to the elections as required by Miss. Const. art. 4, § 41; the candidate worked outside of the district, and until his separation the candidate lived in a marital house that was outside of the district and for which he tried to claim a homestead exemption. Edwards v. Stevens, 963 So. 2d 1108, 2007 Miss. LEXIS 314 (Miss. 2007).

Because a candidate for the Mississippi Senate was unable to establish "without contingencies" and with "absolute proof" that residency in a certain district would have been established by the time of an election, a political party and its executive committee properly declined to place the candidate's name on the ballot; evidence of a purchase contract for a home in the district was insufficient because the sale could have fallen through. Cameron v. Miss. Republican Party, 890 So. 2d 836, 2004 Miss. LEXIS 285 (Miss. 2004).

**2. Illustrative cases.**

Circuit court did not commit manifest error in determining that a state senate candidate changed his domicile from Benton County to Marshall County. The candidate had provided absolute proof, subject to no contingencies, that he would meet the qualifications on or before the date of the general or special election at which he could be elected. Hale v. State Democratic Exec. Comm., 168 So. 3d 946, 2015 Miss. LEXIS 376 (Miss. 2015).

Where a former chancellor had been subject to discipline in the last year of his term, and five years later ran as a candidate for district attorney, the procedure for determining electoral candidates' qualifications under Miss. Code Ann. § 23-15-299(7) was controlling, and the former chancellor was disqualified as a candidate, because the evidence showed the chancellor was not a "practicing attorney," on or before the date of the general election as required by Miss. Code Ann. § 25-31-1. Grist v. Farese, 860 So. 2d 1182, 2003 Miss. LEXIS 452 (Miss. 2003).

## OPINIONS OF THE ATTORNEY GENERAL

In order to qualify for a multi-district legislative office, candidates must qualify with the secretary of the state executive committee of their chosen party by 5:00 p.m. on March 1, and, if candidates intend to run in a single county legislative district, they must qualify with the circuit clerk of their home county by 5:00 p.m. on March 1; there are no statutory provisions that allow any exceptions or extensions to these deadlines. 1999 Miss. Op. Att'y Gen. 161.

It is the duty of the executive committee of the political party to determine whether an individual is in fact qualified for the office sought and whether the individual should be placed on the ballot for the party primary. 1999 Miss. Op. Att'y Gen. 346.

When March 1, falls on a Saturday, rather than designating a date other than that required by the statute, all those officials authorized to accept candidate qualification papers must open their offices and be available for that purpose on that date until 5:00 p.m., regardless of whether that office is normally open on that day of the week. 2003 Miss. Op. Att'y Gen. 12.

Once it is determined by the proper executive committee, that a particular candidate meets the eligibility requirements of the above quoted statute, his or her name must be placed on the primary ballot; any finding by said committee that a candidate is not loyal to the political party conducting the primary would not authorize the committee to refuse to place that candidate's name on the primary ballot. 2003 Miss. Op. Att'y Gen. 15.

If a party executive committee refuses to place a candidate's name on the primary ballot, the candidate may file a complaint in circuit court asking that the committee be enjoined to place his or her name on the ballot; the time frame for obtaining such an injunction would be prior to the printing of the official ballots. 2003 Miss. Op. Att'y Gen. 15.

If a party executive committee makes the factual determination that a particular candidate is disloyal to the party and refuses to place said candidate's name on the ballot, a circuit judge when properly presented with the issue may rule on the legality of basing the decision to disqualify the candidate on the ground of party loyalty. 2003 Miss. Op. Att'y Gen. 15.

If the local party refuses to qualify a candidate, the challenge would be heard by the circuit court of the county wherein the executive committee sits. 2003 Miss. Op. Att'y Gen. 15.

A firefighter, or any other employee, who works a shift of twenty-four consecutive hours, exhausts three days of paid leave for each absence resulting from military service described in Miss. Code Ann. § 33-1-21, and is therefore entitled to be paid for up to five twenty-four hour shifts as the equivalent of the fifteen days paid leave authorized in the statute. 2007 Miss. Op. Att'y Gen. 147, 2007 Miss. AG LEXIS 63.

An expenditure of funds received from candidate qualifications could lawfully be made for the purchase of a laptop computer if a party executive committee as a whole determines, consistent with the facts, that the purchase constitutes an expense incurred in the discharge of the duties of members of the executive committee or their secretaries. 2007 Miss. Op. Att'y Gen. 143, 2007 Miss. AG LEXIS 114.

## RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 232, 255.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 46 (petition to compel acceptance of qualifying papers and fee as candidate).

**CJS.**

29 C.J.S., Elections §§ 326–329.

## § 23-15-301. Payment of election expenses.

All the expenses of printing the tickets or primary election ballots, for necessary stationery, and for paying the managers, clerks and returning officer of every primary election authorized by this chapter held in any county shall be paid by the board of supervisors of such county out of the general funds of the county, but such officers of primary elections shall receive only such compensation as is authorized by Section 23-15-227 to be paid managers, clerks and returning officer for like services in holding elections thereunder. However, this section shall not apply to the expenses of a primary election held by any political party which at either of the last two (2) preceding general elections for the office of Governor or either of the last two (2) preceding national elections for President of the United States did not vote as many as twenty percent (20%) of the total vote cast in the entire state.

**HISTORY:**

Derived from 1972 Code § 23-1-67 [Codes, 1906, § 3718; Hemingway's 1917, § 6410; 1930, § 5877; 1942, § 3119; Laws, 1966, ch. 610, § 1; Laws, 1970, ch. 507, § 1; repealed 1970, ch. 506, § 33; Laws, 1972, ch. 366, § 1; repealed by Laws, 1986, ch. 495, § 331]; en, Laws, 1986, ch. 495, § 92, eff from and after January 1, 1987.

### OPINIONS OF THE ATTORNEY GENERAL

This statute does not authorize any payment to a political party or its executive committee other than those listed, i.e., the expenses of printing tickets or ballots, necessary stationery, and of paying the managers, clerks and returning officer. 1991 Miss. Op. Att'y Gen. 926.

There is no apparent authority for county board of supervisors to compensate individual members of party executive committee for the work they perform for their party, including holding primary elections in place of county election commissioners. 1992 Miss. Op. Att'y Gen. 549.

Since programming DRE units is the equivalent of printing ballots and is an expense to be borne by the county under Section 23-15-301, a circuit clerk or election commissioner who enters an agreement to perform that task with an executive committee would be entitled to compensation in an amount agreed upon by the two parties and approved by the county board of supervisors. 2006 Miss. Op. Att'y Gen. 191.

### RESEARCH REFERENCES

**Am. Jur.**

25 Am. Jur. 2d, Elections § 159.

## § 23-15-303. Each political party or organization to hold independent primary election.

When two (2) or more political parties or political organizations are holding primary elections, each shall be conducted entirely independent of the other but at the same time.

**HISTORY:**

Derived from 1942 Code § 3127 [Codes, 1930, § 5885; repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; en, Laws, 1986, ch. 495, § 93; Laws, 2017, ch. 441, § 70, eff from and after passage (approved Apr. 18, 2017).

**Editor's Notes —**

Laws of 2017, ch. 441, § 205 provides:

"SECTION 205. This act shall take effect and be in force from and after July 1, 2017, except for Sections 3, 9, 13, 14, 15, 18, 19, 21, 24, 31, 70, 108, 115, 116, 117, 118, 119, 184 and 188, which shall take effect and be in force from and after passage [approved April 18, 2017].”

**Amendment Notes —**

The 2017 amendment, effective April 18, 2017, deleted the second paragraph, which read: “The board of supervisors or the supervisor of the district in which the voting precinct is located shall have authority, and it is made its and his duty when requested, to specifically designate the respective places where the precinct election of each party shall be held where there may be a dispute as to the room or exact place for holding such precinct elections.”

### OPINIONS OF THE ATTORNEY GENERAL

Democratic and Republican primaries held on the same day are two separate and distinct elections. 2000 Miss. Op. Att’y Gen. 667.

A registrar must be actually employed in assisting election commissioners or party executive committees, either personally or through a deputy, for a minimum of five hours during a day or for a minimum of five hours accumulated over two or more days in order to claim a per diem; if a registrar, either personally or through a deputy, is actually employed in assisting both the democratic and republican executive committees for the requisite period during the same day, he or she would be entitled to claim two per diems. 2000 Miss. Op. Att’y Gen. 667.

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 223, 224.

## § 23-15-305. Majority vote required for nomination; run-off elections.

The candidate who received the majority number of votes cast for the office which he seeks shall thereby become the nominee of his party for such office and no person shall be declared to be the nominee of his party unless and until he has received a majority of the votes cast for such office, except as hereinafter provided. If no candidate received such majority of the votes cast in the first primary, then the two (2) candidates who receive the highest number of votes cast for such office shall have their names submitted as such candidates to the second primary and the candidate who leads in such second primary shall be nominated for the office.

If the candidate who received the second highest number of votes cast for such office for any reason declines to enter the second primary, then in that event the candidate who received the third highest shall have his name submitted to the second primary, together with the candidate who received the highest number of votes cast for such office.

If the candidate who received the third highest number of votes cast for such office for any reason declines to enter the second primary, then in that event the candidate who received the fourth highest shall have his name submitted to the second primary, together with the candidate who received the highest number of votes cast for such office.

If no candidate will enter the second primary with the candidate who received the highest number of votes cast, then the candidate who received the highest number of votes cast in the first primary shall be declared the nominee of his party for such office.

**HISTORY:**

Derived from 1972 Code § 23-3-69 [Codes, 1942, § 3194; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, § 333]; en, Laws, 1986, ch. 495, § 94, eff from and after January 1, 1987.

### OPINIONS OF THE ATTORNEY GENERAL

If the candidate with the most votes or the candidate with the second most votes declines to enter the runoff, the candidate with the next highest votes would be entitled to have his name placed on the runoff ballot. 2002 Miss. Op. Att'y Gen. 676.

Where a candidate received more than half of the total votes cast for all three candidates in a primary election, he had a majority of the votes as contemplated by this section and § 23-15-191. 2003 Miss. Op. Att'y Gen. 453.

### RESEARCH REFERENCES

**ALR.**

Validity of Runoff Voting Election Methodology. 67 A.L.R.6th 609.

**Am. Jur.**

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 45 (petition to compel declaration as candidate).

## § 23-15-307. Nomination as condition of being placed on general election ballot and holding office.

The name of any candidate shall not be placed upon the official ballot in general elections as a party nominee who is not nominated as herein provided, and the election of any party nominee who shall be nominated otherwise than as provided in this chapter shall be void and he or she shall not be entitled to hold the office to which he or she may have been elected.

**HISTORY:**

Derived from 1942 Code § 3156 [Codes, 1906, § 3721; Hemingway's 1917, § 6413; 1930, § 5909; repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; en, Laws, 1986, ch. 495, § 95; Laws, 2017, ch. 441, § 71, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment deleted the former last sentence, which read: "No political party shall be entitled to recognition, as such, in the appointment of the county or precinct election officers, unless it has made its nominations as herein provided"; and made gender neutral changes.

### RESEARCH REFERENCES

**Am. Jur.**

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 93 (petition to require omission of name of ineligible candidate from ballot).

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 94 (order declaring form of ballot improper and requiring new form of ballot).

## § 23-15-309. Nomination for elective municipal office to be made at primary election; fee requirements; determination of candidate's qualifications.

(1) Nominations for all municipal officers which are elective shall be made at a primary election, or elections, to be held in the manner prescribed by law. All persons desiring to be candidates for the nomination in the primary

elections shall first pay Ten Dollars ($10.00) to the clerk of the municipality, at least sixty (60) days before the first primary election, no later than 5:00 p.m. on such deadline day. If the sixtieth day to file the fee and written statement before an election falls on a Sunday or legal holiday, the fees and written statements submitted on the business day immediately following the Sunday or legal holiday shall be accepted.

(2) The fee paid pursuant to subsection (1) of this section shall be accompanied by a written statement containing the name and address of the candidate, the party with which he or she is affiliated, the email address of the candidate, if any, and the office for which he or she is a candidate.

(3) The clerk shall promptly receipt the payment, stating the office for which the person making the payment is running and the political party with which such person is affiliated. The clerk shall keep an itemized account in detail showing the time and date of the receipt of such payment received by him or her, from whom such payment was received, the party with which such person is affiliated and for what office the person paying the fee is a candidate. No candidate may attempt to qualify with any political party that does not have a duly organized municipal executive committee, and the municipal clerk shall not accept any assessments made pursuant to subsection (1) if the municipal clerk does not have contact information for the secretary of the municipal executive committee for that political party. The clerk shall promptly supply all necessary information and pay over all fees so received to the secretary of the proper municipal executive committee. The funds may be used and disbursed in the same manner as is allowed in Section 23-15-299 in regard to other executive committees.

(4) Upon receipt of the above information, the proper municipal executive committee shall then determine, at the time of the qualifying deadline, whether each candidate is a qualified elector of the municipality, and of the ward if the office sought is a ward office, shall determine whether each candidate either meets all other qualifications to hold the office he or she is seeking or presents absolute proof that he or she will, subject to no contingencies, meet all qualifications on or before the date of the general or special election at which he or she could be elected to office. The executive committee shall determine whether the candidate has taken the steps necessary to qualify for more than one (1) office at the election. The committee also shall determine whether any candidate has been convicted of any felony in a court of this state, or has been convicted on or after December 8, 1992, of any offense in another state which is a felony under the laws of this state, or has been convicted of any felony in a federal court on or after December 8, 1992. Excepted from the above are convictions of manslaughter and violations of the United States Internal Revenue Code or any violations of the tax laws of this state unless such offense also involved misuse or abuse of his or her office or money coming into his or her hands by virtue of the office. If the proper municipal executive committee finds that a candidate either (a) does not meet all qualifications to hold the office he or she seeks and fails to provide absolute proof, subject to no contingencies, that he or she will meet the qualifications on

or before the date of the general or special election at which he or she could be elected, or (b) has been convicted of a felony as described in this subsection and not pardoned, then the executive committee shall notify the candidate and give the candidate an opportunity to be heard. The executive committee shall mail notice to the candidate at least three (3) business days before the hearing to the address provided by the candidate on the qualifying forms, and the committee shall attempt to contact the candidate by telephone, email and facsimile if the candidate provided this information on the forms. If the candidate fails to appear at the hearing or to prove he or she meets all qualifications to hold the office subject to no contingencies, then the name of such candidate shall not be placed upon the ballot. If the executive committee determines that the candidate has taken the steps necessary to qualify for more than one (1) office at the election, the action required by Section 23-15-905, shall be taken.

(5) Where there is but one (1) candidate, the proper municipal executive committee when the time has expired within which the names of candidates shall be furnished shall declare such candidate the nominee.

**HISTORY:**

Derived from 1942 Code § 3152 [Codes, 1906, § 3726; Hemingway's 1917, § 6417; 1930, § 5905; Laws, 1910, ch. 209; Laws, 1950, ch. 499; Laws, 1952 ch. 379; Laws, 1982, chs. 477, § 3, 484, § 1; repealed by Laws, 1986, ch. 495, § 346]; en, Laws, 1986, ch. 495, § 96; Laws, 1987, ch. 499, § 4; Laws, 2000, ch. 549, § 1; Laws, 2000, ch. 592, § 4; Laws, 2007, ch. 604, § 3; brought forward without change, Laws, 2016, ch. 380, § 7; Laws, 2017, ch. 441, § 72, eff from and after July 1, 2017.

**Joint Legislative Committee Note —**

Section 1 of ch. 549, Laws of 2000, effective from and after the date said ch. 549 is effectuated under Section 5 of the Voting Rights Act of 1965, amended this section. Section 4 of ch. 592, Laws of 2000, effective from and after the date said ch. 592 is effectuated under Section 5 of the Voting Rights Act of 1965, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision, and Publication authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication ratified the integration of these amendments as consistent with the legislative intent at the June 29, 2000 meeting of the Committee.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in (4) by adding "then the name of such candidate shall not be placed upon the ballot" at the end of the next-to-last sentence. The Joint Committee ratified the correction at the August 15, 2017, meeting of the Committee.

**Editor's Notes —**

Laws of 1987, ch. 499, § 20, provides as follows:

"SECTION 20. If any section, paragraph, sentence, clause or phrase of this act is declared to be unconstitutional or void, or for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses or phrases shall be in no manner affected thereby but shall remain in full force and effect."

On July 28, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, chs. 549 and 592.

On September 10, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2007, ch. 604.

**Amendment Notes —**

The 2017 amendment added the last sentence of (1); inserted "the email address of the candidate, if any" in (2); added the third sentence of (3); in (4), inserted "at the time of the qualifying deadline" in the first sentence, substituted "the executive committee shall notify the candidate and give the candidate an opportunity to be heard" for "the name of such candidate shall not be place upon the ballot" at the end of the fifth sentence, and added the sixth and seventh sentences; and made gender neutral and minor stylistic changes.

**Cross References —**

Provision that a municipal general election ballot shall contain the names of persons who have been requested to be candidates by petition filed no later than the date on which candidates for nomination in the municipal primary elections are required to pay the fee provided for in this section, see § 23-15-361.

## OPINIONS OF THE ATTORNEY GENERAL

There is no specific prohibition against a county executive committee member from serving as a municipal election commissioner, but it would give the appearance of impropriety for a municipal election commissioner to be identified with a particulars group of nominees. 1998 Miss. Op. Att'y Gen. 803.

A party executive committee must be in place on the qualifying deadline so that the municipal clerk can "promptly" turn the fees and statements of intent over to said committee. 2001 Miss. Op. Att'y Gen. 123.

The statute clearly contemplates that a municipal party executive committee be in place at the time a potential candidate files his statement of intent and pays the filing fee; however, if a clerk has accepted one or more potential candidate's statement of intent and filing fee at a time when no committee is in place and a legitimate temporary committee is subsequently formed prior to the qualifying deadline, such temporary committee could proceed to review the potential candidates' qualifications and conduct a party primary and/or certify unopposed candidates as the party's nominees. 2001 Miss. Op. Att'y Gen. 155.

Since municipal party executive committees are statutorily charged with the responsibility of conducting municipal primaries in accordance with state law, membership on said committees constitutes serving in a position of public trust. 2002 Miss. Op. Att'y Gen. 597.

Potential candidates for membership on a municipal party executive committee are subject to the provisions of Section 44 of the Constitution and this section as they pertain to criminal convictions. 2002 Miss. Op. Att'y Gen. 597.

If a municipal party executive committee finds that a potential candidate for membership on said committee who has filed his or her statement of intent has been convicted of any felony covered by Section 44 of the Constitution and this section, said committee could not lawfully qualify that individual as a candidate. 2002 Miss. Op. Att'y Gen. 597.

A party executive committee has no authority to disqualify or refuse to certify a candidate upon its finding that the candidate misused or abused his office or money coming into his hands by virtue of his office unless there is a felony conviction relating to such alleged misconduct. 2005 Miss. Op. Att'y Gen. 176.

## RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 223-237, 264.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 45 (petition to compel declaration as candidate).

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 46 (petition to compel acceptance of qualifying papers and fee as candidate).

**CJS.**

29 C.J.S., Elections §§ 200-235.

## § 23-15-311. Payment of municipal primary election expenses.

All the expenses of printing the tickets, paying the poll managers, clerks and returning officer of a municipal primary election shall be paid by the municipality from the general funds thereof, but such officers of primary elections shall receive only such compensation as is authorized by law or ordinance to be paid poll managers, clerks and returning officer for like services rendered in the general elections held in the municipality.

**HISTORY:**

Derived from 1972 Code § 23-1-65 [Codes, 1930, § 5906; 1942, § 3153; Laws, 1970, ch. 506, § 19; repealed by Laws, 1986, ch. 495, § 331]; en, Laws, 1986, ch. 495, § 97; Laws, 2017, ch. 441, § 73, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment inserted "poll" twice;

substituted "general elections" for "final and regular elections"; and made a minor stylistic change.

### RESEARCH REFERENCES

**Am. Jur.**
25 Am. Jur. 2d, Elections § 159.

## § 23-15-313. Selection of temporary executive committee in municipality not having party executive committee; notice to public; county executive committee to serve as municipal executive committee under certain circumstances; person convicted of felony barred from serving as member of municipal executive committee.

(1) If there be any political party, or parties, in any municipality which shall not have a party executive committee for such municipality, such political party, or parties, shall within thirty (30) days of the date for which a candidate for a municipal office is required to qualify in that municipality select qualified electors of that municipality and of that party's political faith to serve on a temporary municipal executive committee until members of a municipal executive committee are elected at the next regular election for executive committees. The temporary municipal executive committee shall be selected in the following manner: The chairman of the county executive committee of the party desiring to select a temporary municipal executive committee shall call, upon petition of five (5) or more members of that political faith, a mass meeting of the qualified electors of their political faith who reside in such municipality to meet at some convenient place within such municipality, at a time to be designated in the call, and at such mass convention the members of that political faith shall select a temporary municipal executive committee which shall serve until members of a municipal executive committee are elected at the next regular election for executive committees. The public shall be given notice of such mass meeting as provided in Section 23-15-315. The chairman of the county executive committee shall authorize the call within five (5) calendar days of receipt of the petition. If the chairman of the county executive committee is either incapacitated, unavailable or nonresponsive and does not authorize the mass call within five (5) calendar days of receipt of the petition, any elected officer of the county executive committee may authorize the call within five (5) calendar days. If no elected officer of the county executive committee acts to approve such petition after an additional five (5) calendar days from the date, the chair of the county executive committee not taking action as provided by this section, the petitioners shall be authorized to produce the call themselves.

(2) If no municipal executive committee is selected or otherwise formed before an election, the county executive committee may serve as the temporary municipal executive committee and exercise all of the duties of the municipal executive committee for the municipal election. After a county executive

committee has fulfilled its duties as the temporary municipal executive committee, as soon as practicable thereafter, the county executive committee shall select a municipal executive committee no later than before the next municipal election.

(3) A person who has been convicted of a felony in a court of this state or any other state or a court of the United States, shall be barred from serving as a member of a municipal executive committee.

**HISTORY:**

Derived from 1942 Code § 3154 [Codes, Hemingway's 1917, §§ 6418, 6419; 1930, § 5907; Laws, 1910, ch. 209; repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; en, Laws, 1986, ch. 495, § 98; Laws, 2010, ch. 428, § 1, eff July 22, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

By letter dated July 22, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 428, § 1.

### OPINIONS OF THE ATTORNEY GENERAL

The statute clearly contemplates that a municipal party executive committee be in place at the time a potential candidate files his statement of intent and pays the filing fee; however, if a clerk has accepted one or more potential candidate's statement of intent and filing fee at a time when no committee is in place and a legitimate temporary committee is subsequently formed prior to the qualifying deadline, such temporary committee could proceed to review the potential candidates' qualifications and conduct a party primary and/or certify unopposed candidates as the party's nominees. 2001 Miss. Op. Att'y Gen. 155.

In order for a political party to have nominees whose names are to be placed on the municipal general election ballot, there must be either a permanent municipal executive committee representing the party or a temporary committee representing said party. 2005 Miss. Op. Att'y Gen. 153.

### RESEARCH REFERENCES

**Am. Jur.**

25 Am. Jur. 2d, Elections § 86.

**CJS.**

29 C.J.S., Elections §§ 215–232.

## § 23-15-315. Publication of notice to public.

The county executive committee chairman shall publish a copy of his call for a meeting in some newspaper published at least once per week in the municipality affected for three (3) weeks preceding the date set for the mass convention, or if there be no newspaper published in the municipality, then in some newspaper having general circulation in the municipality and by posting notices continuously in three (3) public places in the municipality, one (1) of which shall be city hall or be the regular location where the municipal governing authority meets to conduct business not less than three (3) weeks before the date for the mass convention.

**HISTORY:**

Derived from 1942 Code § 3155 [Codes, Hemingway's 1917, § 6420; 1930, § 5908; Laws, 1910, ch. 209; repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; en, Laws, 1986, ch. 495, § 99; Laws, 2010, ch. 428, § 2; Laws, 2013, ch. 391, § 2, eff August 1, 2013 (the date of the United States Attorney

General's response to the submission of this section under Section 5 of the Voting Rights Act of 1965).

**Editor's Notes —**

The effective date of Chapter 391, Laws of 2013, which amended this section, is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bill was approved, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. For that reason, the Mississippi Attorney General's Office submitted Chapter 391, Laws of 2013, to the United States Attorney General, in order to technically meet the requirements of Section 5 and fulfill the condition in the effective date of the bill, which will allow the bill to take effect.

By letter dated August 1, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 391 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 391, so Chapter 391 became effective from and after August 1, 2013, the date of the United States Attorney General's response letter.

By letter dated July 22, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 428, § 2.

### OPINIONS OF THE ATTORNEY GENERAL

The statute clearly contemplates that a municipal party executive committee be in place at the time a potential candidate files his statement of intent and pays the filing fee; however, if a clerk has accepted one or more potential candidate's statement of intent and filing fee at a time when no committee is in place and a legitimate temporary committee is subsequently formed prior to the qualifying deadline, such temporary committee could proceed to review the potential candidates' qualifications and conduct a party primary and/or certify unopposed candidates as the party's nominees. 2001 Miss. Op. Att'y Gen. 155.

## § 23-15-317. Nomination of nominee when vacancy in nomination occurs between primary election and general election; procedure for withdrawal based upon legitimate nonpolitical reason.

If any person nominated for office in a primary election shall die, be removed after his or her nomination or withdraw or resign from his or her candidacy for a legitimate nonpolitical reason as defined in this section, and the vacancy in nomination shall occur between the primary election and the ensuing general election, then the municipal, county or state executive committee with which the original nominee qualified as a candidate in the primary election shall nominate a nominee for such office. Where such a party nominee is unopposed each political party registered with the State Board of Election Commissioners shall have the privilege of nominating a candidate for the office involved. Such nominee shall be duly certified by the respective executive committee chair. Within two (2) days after such nomination is made by the appropriate executive committee, such committee shall formally notify the Secretary of State of the name of the nominee. The Secretary of State shall thereupon officially notify the appropriate officials charged with conducting the election for the office wherein the vacancy occurred of the name of the nominee. All nominations made pursuant to the provisions of this section shall have the same force and effect and shall entitle the nominees to all rights and privileges that would accrue to them as if they had been nominated in the regular primary election.

"Legitimate nonpolitical reason" as used in this section shall be limited to the following:

(a) Reasons of health, which shall include any health condition which, in the written opinion of a medical doctor, would be harmful to the health of the candidate if he or she continued.

(b) Family crises, which shall include circumstances which would substantially alter the duties and responsibilities of the candidate to the family or to a family business.

(c) Substantial business conflict, which shall include the policy of an employer prohibiting employees being candidates for public offices and an employment change which would result in the ineligibility of the candidate or which would impair his or her capability to properly carry out the functions of the office being sought.

Any candidate who withdraws based upon a "legitimate nonpolitical reason" which is not covered by the above definition shall have the strict burden of proof for his or her reason.

A candidate who wishes to withdraw for a legitimate nonpolitical reason shall submit his or her reason by sworn affidavit. Such affidavit shall be filed with the state party chair of the nominee's party and the State Board of Election Commissioners. No substitution of candidates shall be authorized, except for death or disqualification, unless the State Board of Election Commissioners approves the affidavit as constituting a "legitimate nonpolitical reason" for the candidate's resignation within five (5) days of the date the affidavit is submitted to the board.

Immediately upon approval or disapproval of such affidavit, the State Board of Election Commissioners shall notify the respective executive committee of same.

**HISTORY:**

Derived from 1972 Code § 23-5-136 [Laws, 1984, ch. 439, § 1; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 100; Laws, 2017, ch. 441, § 176, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment made gender neutral and minor stylistic changes.

## JUDICIAL DECISIONS

**1. In general.**

The statute applies only where a candidate dies after the primary but prior to the general election. Upton v. McKenzie, 761 So. 2d 167, 2000 Miss. LEXIS 136 (Miss. 2000).

State political party acted in good faith in nominating candidate for state House of Representatives prior to primary election when one candidate died and the other withdrew for legitimate reason; statute permitting political party to fill vacancy in nomination technically applied only to candidates who withdraw after primary, but there was no provision that gave direction to party on how to proceed under facts presented, and there was no fact or circumstance in case that indicated any wrongful or fraudulent purpose in conduct of election. Cummings v. Benderman, 681 So. 2d 97, 1996 Miss. LEXIS 501 (Miss. 1996).

### OPINIONS OF THE ATTORNEY GENERAL

The Democratic party was entitled to nominate a candidate in a deceased candidate's place, even though the candidate's death occurred prior to the primary election and not between the primary and general elections as stated in this section, where the deceased candidate was unopposed for the Democratic nomination which necessarily meant that there would be no Democratic primary election conducted for the office in question and, therefore, the deceased candidate was the Democratic nominee. 1999 Miss. Op. Att'y Gen. 132.

Where a candidate was killed after he had qualified and after the time for qualifying had ended, and was the sole qualifying candidate for office, and had been certified by the county Democratic executive committee, the county Democratic executive committee, and only the county Democratic executive committee, was empowered to nominate a nominee for the office. 1999 Miss. Op. Att'y Gen. 345.

If a nominee withdraws for a legitimate nonpolitical reason as defined in Section 23-15-317 and his sworn affidavit is approved by the State Board of Election Commissioners, the municipal party executive committee would then be required to name a substitute nominee. If a nominee withdraws and no affidavit is submitted and approved, said executive committee would have no authority to name a substitute nominee. In either case, the nominee has the right to withdraw his candidacy pursuant to Section 23-15-363. 2005 Miss. Op. Att'y Gen. 237.

### RESEARCH REFERENCES

**Am. Jur.**
26 Am. Jur. 2d, Elections §§ 206, 209, 210.

**CJS.**
29 C.J.S., Elections §§ 296, 297, 302.

## § 23-15-319. Applicability of chapter to municipal primary elections.

All the provisions of this subarticle as far as practicable shall apply to and regulate primary elections for the nomination of elective municipal offices. Candidates for the nomination of such municipal offices shall file with the clerk of the city, village or town, the affidavits and reports required of candidates for party nominations to any county or county district office to be filed pursuant to this chapter.

**HISTORY:**
Derived from 1972 Code § 23-3-71 [Codes, 1942, § 3195; Laws, 1935, ch. 19; Laws, 1944, ch. 210; repealed by Laws, 1986, ch. 495, § 333]; Laws, 1986, ch. 495, § 101, eff from and after January 1, 1987.

### JUDICIAL DECISIONS

### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-7-71.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-7-71.**

Since the proceedings in a judicial review of a municipal primary election contest are in the nature of an appeal, no matter may be presented to the special tribunal which has not been previously heard and decided by the executive committee of the party. Shannon v. Henson, 499 So. 2d 758, 1986 Miss. LEXIS 2883 (Miss. 1986).

Where X marks drawn on a ballot were smeared and poorly drawn, it was a question of fact to be decided by a special tribunal whether these marks were result of poor penmanship or were placed there for improper identification. Anders v. Longmire, 226 Miss. 215, 83 So. 2d 828, 1955 Miss. LEXIS 627 (Miss. 1955).

# ARTICLE 13.

# BALLOTS.

Subarticle A. Primary elections. .......................................... 23-15-331
Subarticle B. Other Elections. .......................................... 23-15-351

## SUBARTICLE A.

## PRIMARY ELECTIONS.

Sec.
23-15-331. Duties of state executive committee.
23-15-333. Duties of county executive committee; order in which titles of various offices and names of candidates are to be listed on the ballot.
23-15-335. Duties of person designated by county executive committee to distribute ballots.

### § 23-15-331. Duties of state executive committee.

It shall be the duty of the state executive committee of each political party to furnish to each county executive committee, not less than fifty (50) days prior to the election, the names of all state and state district candidates and all candidates for legislative districts composed of more than one county or parts of more than one county who have qualified as provided by law, and in accordance with the requirements of Section 23-15-333 a sample of the official ballot to be used in the primary, the general form of which shall be followed as nearly as practicable.

**HISTORY:**

Derived from 1972 Code § 23-1-39 [Codes, 1906, § 3704; Hemingway's 1917, § 6396; 1930, § 5881; 1942, § 3123; Laws, 1970, ch. 506, § 6; Laws, 1978, ch. 391, § 1; Laws, 1984, ch. 401, § 4; repealed by Laws, 1986, ch. 495, § 331]; en, Laws, 1986, ch. 495, § 102, eff from and after January 1, 1987.

#### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections § 229.
26 Am. Jur. 2d, Elections §§ 265, 296.

**CJS.**

29 C.J.S., Elections § 273.

**Law Reviews.**

Stavis, A century of struggle for black enfranchisement in Mississippi: From the Civil War to the congressional challenge of 1965-and beyond. 57 Miss. L. J. 591, December, 1987.

Rhodes, Enforcing the Voting Rights Act in Mississippi through litigation. 57 Miss. L. J. 705, December, 1987.

### § 23-15-333. Duties of county executive committee; order in which titles of various offices and names of candidates are to be listed on the ballot.

(1) The county executive committee shall have printed all necessary ballots, for use in primary elections. The county executive committee shall have printed all necessary absentee ballots forty-five (45) days before the election as required by law. The ballots shall contain the names of all the candidates to be voted for at the election, and there shall be left on each ballot

one (1) blank space under the title of each office for which a nominee is to be elected; and in the event of the death of any candidate whose name shall have been printed on the ballot, the name of the candidate duly substituted in the place of the deceased candidate may be written in such blank space by the voter. Except as otherwise provided in subsection (2) of this section, the order in which the titles to the various offices shall be printed, and the size, print and quality of the paper of the ballot is left to the discretion of the county executive committee. Provided, however, that in all cases the arrangement of the names of the candidates for each office shall be alphabetical. No ballot shall be used except those so printed.

(2) The titles for the various offices shall be listed in the following order:

(a) Candidates, electors or delegates for the following national offices:

(i) President of the United States of America;

(ii) United States Senator or United States Representative;

(b) Candidates for the following statewide offices: Governor, Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, Auditor of Public Accounts, Commissioner of Agriculture and Commerce, Commissioner of Insurance;

(c) Candidates for the following state district offices: Mississippi Transportation Commissioner, Public Service Commissioner, District Attorney;

(d) Candidates for the following legislative offices: Senator and House of Representatives;

(e) Candidates for countywide office;

(f) Candidates for county district office.

The order in which the titles for the various offices are listed within each of the categories listed in paragraphs (e) and (f) are left to the discretion of the county executive committee. Candidates' names shall be listed alphabetically under each office by the candidate's last name.

(3) If after the deadline to qualify as a candidate for an office, only one (1) person has duly qualified to be a candidate for the office in the primary election, the name of that person shall be placed on the ballot; provided, however, that if not more than one (1) person has duly qualified to be a candidate for each office on the primary election ballot, the election for all offices on the ballot shall be dispensed with and the appropriate executive committee shall declare each candidate as the party nominee if the candidate meets all the qualifications to hold the office.

(4)(a) If it is eligible under Section 23-15-266, the county executive committee may enter into a written agreement with the circuit clerk or the county election commission authorizing the circuit clerk or the county election commission to perform any of the duties required of the county executive committee pursuant to this section. Any agreement entered into pursuant to this subsection shall be signed by the chair of the county executive committee and the circuit clerk or the chair of the county election commission, as appropriate. The county executive committee shall notify the state executive committee and the Secretary of State of the existence of such agreement.

(b) If it is eligible under Section 23-15-266, the municipal executive committee may enter into a written agreement with the municipal clerk or the municipal election commission authorizing the municipal clerk or the municipal election commission to perform any of the duties required of the municipal executive committee pursuant to this section. Any agreement entered into pursuant to this subsection shall be signed by the chair of the municipal executive committee and the municipal clerk or the chair of the municipal election commission, as appropriate. The municipal executive committee shall notify the state executive committee and the Secretary of State of the existence of such agreement.

**HISTORY:**

Derived from 1942 Code § 3124 [Codes, 1906, § 3710; Hemingway's 1917, § 6402, § 5882; repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; en, Laws, 1986, ch. 495, § 103; Laws, 2000, ch. 592, § 7; Laws, 2001, ch. 523, § 5; Laws, 2017, ch. 441, § 74, eff from and after July 1, 2017.

**Editor's Notes —**

On July 28, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 592.

The United States Attorney General, by letter dated June 20, 2001, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2001, ch. 523.

**Amendment Notes —**

The 2017 amendment in (2), rewrote (a), which read: "Candidates for national office," and added (i) and (ii), rewrote (b) through (d), which read: "(b) Candidates for statewide office; (c) Candidates for state district office; (d) Candidates for legislative office," and in the last paragraph, substituted "paragraphs (e) and (f) are left" for "this subsection is left" and added the last sentence; rewrote (3), which read: "The county executive committee shall also prepare full instructions for the guidance of electors at elections as to obtaining ballots, the manner of marking them, and the mode of obtaining new ballots in the place of those spoiled by accident. The instructions shall be printed in large, clear type on 'Cards of Instruction,' and the county executive committee shall furnish the same in sufficient numbers for the use of electors. The cards shall be preserved by the officers of election and returned by them to the county executive committee and they may be used, if applicable, in subsequent elections"; and made gender neutral and minor stylistic changes.

**Cross References —**

Provision that it is the duty of the state executive committee to furnish to each county executive committee a sample of the official ballot to be used in the primary, see § 23-15-331.

## JUDICIAL DECISIONS

**1. In general.**

The statute does not authorize a county executive committee to proceed in the same manner as § 23-15-317 regardless of when the death of a candidate occurs. Upton v. McKenzie, 761 So. 2d 167, 2000 Miss. LEXIS 136 (Miss. 2000).

## RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections § 229.

26 Am. Jur. 2d, Elections §§ 199, 206, 207.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 91 (petition to change form and content of ballot).

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 94 (order declaring form of ballot improper and requiring new form of ballot).

**CJS.**

29 C.J.S., Elections §§ 457–462, 444–446, 463–465.

### § 23-15-335. Duties of person designated by county executive committee to distribute ballots.

(1) The county executive committee shall designate a person whose duty it shall be to distribute all necessary ballots for use in a primary election, and shall designate one (1) among the poll managers at each polling place to receive and receipt for the blank ballots to be used at that place. When the blank ballots are delivered to a local poll manager, the distributor shall take from the local poll manager a receipt therefor signed in duplicate by both the distributor and the poll manager, one (1) of which receipts the distributor shall deliver to the circuit clerk and the other shall be retained by the local poll manager and the last mentioned duplicate receipt shall be enclosed in the ballot box with the voted ballots when the polls have been closed and the votes have been counted. The printer of the ballots shall take a receipt from the distributor of the ballots for the total number of the blank ballots delivered to the distributor. The printer shall secure all ballots printed by him or her in such a safe manner that no person can procure them or any of them, and he or she shall deliver no blank ballot or ballots to any person except the distributor above mentioned, and then only upon his or her receipt therefor as above specified. The distributor of the blank ballots shall so securely hold the same that no person can obtain any of them, and he or she shall not deliver any of them to any person other than to the authorized local poll managers and upon their respective receipts therefor. The executive committee shall see to it that the total blank ballots delivered to the distributor, shall correspond with the total of the receipts executed by the local poll managers.

(2)(a) If it is eligible under Section 23-15-266, the county executive committee may enter into a written agreement with the circuit clerk or the county election commission authorizing the circuit clerk or the county election commission to perform any of the duties required of the county executive committee pursuant to this section. Any agreement entered into pursuant to this subsection shall be signed by the chair of the county executive committee and the circuit clerk or the chair of the county election commission, as appropriate. The county executive committee shall notify the state executive committee and the Secretary of State of the existence of such agreement.

(b) If it is eligible under Section 23-15-266, the municipal executive committee may enter into a written agreement with the municipal clerk or the municipal election commission authorizing the municipal clerk or the municipal election commission to perform any of the duties required of the municipal executive committee pursuant to this section. Any agreement entered into pursuant to this subsection shall be signed by the chair of the municipal executive committee and the municipal clerk or the chair of the municipal election commission, as appropriate. The municipal executive committee shall notify the state executive committee and the Secretary of State of the existence of such agreement.

(3) Any person charged with any of the duties prescribed in this section

who shall willfully or with culpable carelessness violate the same shall be guilty of a misdemeanor.

**HISTORY:**

Derived from 1972 Code § 23-3-39 [Codes, 1942, § 3177; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, § 333]; en, Laws, 1986, ch. 495, § 104; Laws, 2001, ch. 523, § 6, eff June 20, 2001 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section); Laws, 2017, ch. 441, § 177, eff from and after July 1, 2017.

**Editor's Notes —**

The United States Attorney General, by letter dated June 20, 2001, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2001, ch. 523.

**Amendment Notes —**

The 2017 amendment, in (1), inserted "poll" preceding "manager" and "managers" throughout, and inserted "(1)" in the second sentence; and made gender neutral changes.

## JUDICIAL DECISIONS

### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-3-9.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-3-9.**

In the absence of any charge of fraud, irregularity of any kind, and in the absence of any proof that the purity and integrity of the party primary election was violated, the fact that the ballots at one precinct were delivered to a party who was the wife and sister-in-law of those who were designated to be receiving managers but could not be located at the time of delivery, did not warrant or require the voiding of the election at that precinct. Galmore v. Washington, 254 So. 2d 885 (Miss. 1971).

Where there is a total departure from the mandatory provisions of the statute and it is not possible to ascertain the will of the electors because a substantial portion of the votes were void, a new election should be ordered for the purpose of ascertaining the voter's choice. May v. Layton, 213 Miss. 129, 55 So. 2d 460, 56 So. 2d 89, 1951 Miss. LEXIS 519, 1952 Miss. LEXIS 340 (Miss. 1951).

## RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections § 316.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 74 (allegation of failure to deliver election materials).

**CJS.**

29 C.J.S., Elections § 441.

**Lawyers' Edition.**

Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L. Ed. 2d 1960.

# SUBARTICLE B.

# OTHER ELECTIONS.

Sec.
23-15-351. Authority to print ballots; penalties.
23-15-353. Sufficient ballots to be printed and distributed.
23-15-355. Payment of ballot expenses.
23-15-357. Back and outside of ballot.
23-15-359. Names of candidates to be printed on ballot; filing of petition for office; inapplicability of section to municipal elections; special elections; determination of candidate's qualifications; declaration of nominee in single candidate race.

Sec.
23-15-361. Names of municipal office candidates to be printed on ballot; filing of petition for municipal office; determination of candidate's qualifications; declaration of nominee in single candidate race.
23-15-363. Names of candidates who have not duly withdrawn not omitted from ballot.
23-15-365. Write-in candidates; blank space on general, special and primary election ballots; applicability of section to elections conducted under Sections 23-15-974 through 23-15-985.
23-15-367. Printing of official ballot generally; order in which titles of various offices are to be listed on the ballot; furnishing of sample of official ballot; alphabetical arrangement in primary elections.
23-15-369. Form and substance of proposed constitutional amendment or other public measure.
23-15-371. Loss or destruction of official ballots.
23-15-373. Report regarding lost ballots.
23-15-375. Local issues.

## § 23-15-351. Authority to print ballots; penalties.

It shall be the duty of the chair of the election commission of each county to have printed all necessary ballots for use in elections, except ballots in municipal elections which shall be printed as herein provided by the authorities of the respective municipalities; and the election commissioner shall cause the official ballot to be printed by a printer sworn to keep the ballots secret under the penalties prescribed by law. The printer shall deliver to the election commissioners for holding elections, a certificate of the number of ballots printed for each precinct, and shall not print any additional ballots, except on instruction of proper election commissioners; and failure to observe either of these requirements shall be a misdemeanor.

**HISTORY:**

Derived from 1972 Code § 23-5-119 [Codes, 1892, § 3651; 1906, § 4158; Hemingway's 1917, § 6792; 1930, § 6224; 1942, § 3253; Laws, 1968, ch. 571, § 1; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 105; Laws, 2001, ch. 301, § 3; Laws, 2017, ch. 441, § 75, eff from and after July 1, 2017.

**Editor's Notes —**

The United States Attorney General, by letter dated February 7, 2001, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2001, ch. 301, § 3.

**Amendment Notes —**

The 2017 amendment deleted the last paragraph, which read: "In the case of the statewide special election for the selection of the official state flag provided for in Section 1 of Laws, 2001, ch. 301, the provisions of this article regarding the printing and distribution of the official ballots, shall be governed by the provisions of Section 1(2) of Laws, 2001, ch. 301"; and made gender neutral and minor stylistic changes.

**Cross References —**

Exemption of purchase of ballots printed pursuant to this section from bidding requirements, see § 31-7-13.

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections § 316.

**CJS.**

29 C.J.S., Elections § 441.

**Lawyers' Edition.**

Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L. Ed. 2d 1960.

## § 23-15-353. Sufficient ballots to be printed and distributed.

The officer charged with printing and distributing the official ballot shall ascertain from the registrar, at least ten (10) days before the day of election, the number of registered voters in each voting precinct; and he or she shall have printed and distributed a sufficient number of ballots for use in each precinct.

**HISTORY:**

Derived from 1972 Code § 23-5-121 [Codes, 1892, § 3659; 1906, § 4166; Hemingway's 1917, § 6800; 1930, § 6225; 1942, § 3254; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 106; Laws, 2017, ch. 441, § 76, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment deleted the last two sentences, which read: "He shall also prepare full instructions for the guidance of electors at elections as to obtaining ballots, the manner of marking them, and the mode of obtaining new ballots in the place of those spoiled by accident. The instructions shall be printed in large, clear type, on 'cards of instruction,' and the officer shall furnish the same in sufficient numbers for the use of electors. The cards shall be preserved by the officers of election and returned by them to the commissioners of election; and they may be used, if applicable, in subsequent elections"; and made a gender neutral change.

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections § 316.

**CJS.**

29 C.J.S., Elections § 441.

## § 23-15-355. Payment of ballot expenses.

Ballots in all elections shall be printed and distributed at public expense and shall be known as "official ballots." The expense of printing the ballots shall be paid out of the county treasury, except that in municipal elections such expenses shall be paid by the respective cities, towns and villages.

**HISTORY:**

Derived from 1972 Code § 23-5-123 [Codes, 1892, § 3650; 1906, § 4157; Hemingway's 1917, § 6791; 1930, § 6226; 1942, § 3255; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 107; Laws, 2001, ch. 301, § 4; Laws, 2017, ch. 441, § 77, eff from and after July 1, 2017.

**Editor's Notes —**

The United States Attorney General, by letter dated February 7, 2001, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2001, ch. 301, § 4.

**Amendment Notes —**

The 2017 amendment deleted the last sentence, which read: "In the case of the statewide special election for the selection of the official state flag provided for in Section 1 of Laws, 2001, ch. 301, the provisions of this section regarding payment of the expenses of printing the official ballots shall be governed by the provisions of Section 1(2) of Laws, 2001, ch. 301;" and made a minor stylistic change.

### JUDICIAL DECISIONS

#### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-15-355.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-15-355.**

Absentee ballots, larger in size than home ballots, and containing name of candidate who had not qualified, substantially complies with ballot requirements, in view of objects to be accomplished by and circumstances surrounding special statute permitting soldiers to vote by absentee ballots. Gregory v. Sanders, 195 Miss. 508, 15 So. 2d 432, 1943 Miss. LEXIS 154 (Miss. 1943).

## § 23-15-357. Back and outside of ballot.

On the back and outside of the ballot shall be printed the words "OFFICIAL BALLOT," the name of the voting precinct or place for which the ballot is prepared, and the date of the election.

**HISTORY:**

Derived from 1972 Code § 23-5-125 [Codes, 1892, § 3657; 1906, § 4164; Hemingway's 1917, § 6798; 1930, § 6227; 1942, § 3256; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 108, eff from and after January 1, 1987.

### JUDICIAL DECISIONS

**ANALYSIS**

1.-5. [Reserved for future use.]
6. Under former Section 23-5-125.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-5-125.**

The failure of absentee ballots to include the precinct name did not affect the validity of such ballots. Fouche v. Ragland, 424 So. 2d 559, 1982 Miss. LEXIS 2389 (Miss. 1982).

### OPINIONS OF THE ATTORNEY GENERAL

The printing of the information required by the statute on the front of Optical Mark Reading ballots accomplishes the purpose of the statute and promotes the most efficient use of the voting system; therefore, it is legally permissible to print the required information on the front of the ballot only. 2001 Miss. Op. Att'y Gen. 101.

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections § 285.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 91 (petition to change form and content of ballot).

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 94 (order declaring form of ballot improper and requiring new form of ballot).

## § 23-15-359. Names of candidates to be printed on ballot; filing of petition for office; inapplicability of section to municipal elections; special elections; determination of candidate's qualifications; declaration of nominee in single candidate race.

(1) Except as provided in this section, the ballot shall contain the names of all party nominees certified by the appropriate executive committee, and independent and special election candidates who have timely filed petitions containing the required signatures and assessments that must be paid pursuant to Section 23-15-297, if the candidates and nominees meet all of the qualifications to hold the office sought. A petition requesting that an independent or special election candidate's name be placed on the ballot for any office shall be filed as provided for in subsection (3) or (4) of this section, as appropriate, and shall be signed by not less than the following number of qualified electors:

(a) For an office elected by the state at large, not less than one thousand (1,000) qualified electors.

(b) For an office elected by the qualified electors of a Supreme Court district, not less than three hundred (300) qualified electors.

(c) For an office elected by the qualified electors of a congressional district, not less than two hundred (200) qualified electors.

(d) For an office elected by the qualified electors of a circuit or chancery court district, not less than one hundred (100) qualified electors.

(e) For an office elected by the qualified electors of a senatorial or representative district, not less than fifty (50) qualified electors.

(f) For an office elected by the qualified electors of a county, not less than fifty (50) qualified electors.

(g) For an office elected by the qualified electors of a supervisors district or justice court district, not less than fifteen (15) qualified electors.

(h) For the Office of President of the United States, a party nominee or independent candidate shall pay an assessment in the amount of Two Thousand Five Hundred Dollars ($2,500.00).

(2)(a) Unless the petition or fee, whichever is applicable, required above shall be filed as provided for in subsection (3), (4) or (5) of this section, as appropriate, the name of the person requested to be a candidate, unless nominated by a political party, shall not be placed upon the ballot. The ballot shall contain the names of each candidate for each office, and the names shall be listed under the name of the political party that candidate represents as provided by law and as certified to the circuit clerk by the state executive committee of the political party. In the event the candidate qualifies as an independent as provided in this section, he or she shall be listed on the ballot as an independent candidate.

(b) The name of an independent or special election candidate who dies before the printing of the ballots, shall not be placed on the ballots.

(3) Petitions for offices described in paragraphs (a), (b), (c), (d) and (e) of subsection (1) of this section shall be filed with the Secretary of State by no later than 5:00 p.m. on the same date or business day, as applicable, by which candidates are required to pay the fee provided for in Section 23-15-297; however, no petition may be filed before January 1 of the year in which the election for the office is held.

(4) Petitions for offices described in paragraphs (f) and (g) of subsection (1) of this section shall be filed with the proper circuit clerk by no later than 5:00 p.m. on the same date by which candidates are required to pay the fee provided for in Section 23-15-297; however, no petition may be filed before January 1 of the year in which the election for the office is held. The circuit clerk shall notify the county election commissioners of all persons who have filed petitions with the clerk. The notification shall occur within two (2) business days and shall contain all necessary information.

(5) The assessment for the office described in paragraph (h) of subsection (1) of this section shall be paid to the Secretary of State. The Secretary of State shall deposit any qualifying fees received from candidates into the Elections Support Fund established in Section 23-15-5.

(6) The election commissioners may also have printed upon the ballot any local issue election matter that is authorized to be held on the same date as the regular or general election pursuant to Section 23-15-375; however, the ballot form of the local issue must be filed with the election commissioners by the appropriate governing authority not less than sixty (60) days before the date of the election.

(7) The provisions of this section shall not apply to municipal elections or to the election of the offices of justice of the Supreme Court, judge of the Court of Appeals, circuit judge, chancellor, county court judge and family court judge.

(8) Nothing in this section shall prohibit special elections to fill vacancies in either house of the Legislature from being held as provided in Section 23-15-851. In all elections conducted under the provisions of Section 23-15-851, there shall be printed on the ballot the name of any candidate who, not having been nominated by a political party, shall have been requested to be a candidate for any office by a petition filed with the Secretary of State and signed by not less than fifty (50) qualified electors.

(9) The appropriate election commission shall determine whether each candidate is a qualified elector of the state, state district, county or county district they seek to serve, and whether each candidate meets all other qualifications to hold the office he or she is seeking or presents absolute proof that he or she will, subject to no contingencies, meet all qualifications on or before the date of the general or special election at which he or she could be elected to office. The election commission shall determine whether the candidate has taken the steps necessary to qualify for more than one (1) office at the election. The election commission also shall determine whether any candidate has been convicted of any felony in a court of this state, or has been convicted on or after December 8, 1992, of any offense in another state which is a felony under the laws of this state, or has been convicted of any felony in a federal court on or after December 8, 1992. Excepted from the above are convictions of manslaughter and violations of the United States Internal Revenue Code or any violations of the tax laws of this state, unless the offense also involved misuse or abuse of his or her office or money coming into his or her hands by virtue of the office. If the appropriate election commission finds that a candidate either (a) is not a qualified elector, (b) does not meet all qualifications to hold the office he or she seeks and fails to provide absolute proof, subject to no contingencies, that he or she will meet the qualifications on or before the date of the general or special election at which he or she could be elected, or (c) has been convicted of a felony as described in this subsection, and not pardoned, then the election commission shall notify the candidate and give the candidate an opportunity to be heard. The election commission shall mail notice to the candidate at least three (3) business days before the hearing to the address provided by the candidate on the qualifying forms, and the committee shall attempt to contact the candidate by telephone, email and facsimile if the candidate provided this information on the forms. If the candidate fails to appear at the hearing or to prove that he or she meets all qualifications to hold the office subject to no contingencies, then the name of such candidate shall not

be placed upon the ballot. If the appropriate election commission determines that the candidate has taken the steps necessary to qualify for more than one (1) office at the election, the action required by Section 23-15-905, shall be taken.

(10) If after the deadline to qualify as a candidate for an office or after the time for holding any party primary for an office, only one (1) person has duly qualified to be a candidate for the office in the general election, the name of that person shall be placed on the ballot; provided, however, that if not more than one (1) person duly qualified to be a candidate for each office on the general election ballot, the election for all offices on the ballot shall be dispensed with and the appropriate election commission shall declare each candidate elected without opposition if the candidate meets all the qualifications to hold the office as determined pursuant to a review by the election commission in accordance with the provisions of subsection (9) of this section and if the candidate has filed all required campaign finance disclosure reports as required by Section 23-15-807.

(11) The petition required by this section may not be filed by using the Internet.

**HISTORY:**

Derived from 1972 Code § 23-5-134 [Laws, 1978, ch. 429, § 1; Laws, 1982, ch. 477, § 4; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 109; Laws, 1987, ch. 499, § 5; Laws, 1989, ch. 431, § 2; Laws, 2000, ch. 592, § 5; Laws, 2002, ch. 336, § 1; Laws, 2006, ch. 574, § 15; Laws, 2007, ch. 570, § 2; Laws, 2007, ch. 604, § 4; Laws, 2008, ch. 554, § 1; Laws, 2010, ch. 320, § 2; Laws, 2016, ch. 380, § 3; Laws, 2017, ch. 441, § 78, eff from and after July 1, 2017.

**Joint Legislative Committee Note —**

Section 2 of ch. 570, Laws of 2007, effective from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended (approved April 21, 2007), amended this section. Section 4 of ch. 604, Laws of 2007, effective from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, or July 1, 2007, whichever occurs later (approved April 21, 2007), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 570, Laws of 2007, which contains language that specifically provides that it supersedes § 23-15-359, as amended by Laws of 2007, ch. 604.

**Editor's Notes —**

The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 91.

Laws of 1999, ch. 432, § 1, provides that:

"SECTION 1. From and after the date Laws, 1999, ch. 432, is effectuated under Section 5 of the Voting Rights Act of 1965, all family courts are abolished. All matters pending in any family court abolished shall be transferred to the county court of the county wherein the family court was located without the necessity for any motion or order of court for such transfer."

On May 28, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the enactment of Laws of 1999, ch. 432.

On July 28, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 592.

The United States Attorney General, by letter dated June 27, 2002 interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2002, ch. 336.

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, § 15.

On September 10, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2007, ch. 570.

On September 10, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2007, ch. 604.

On July 31, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 554.

By letter dated July 22, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 320.

**Amendment Notes —**

The 2017 amendment added "if the candidates and nominees . . . hold the office sought" at the end of the first sentence of (1); in (3), inserted "or business day, as applicable," and deleted "Mississippi Code of 1972" following "Section 23-15-297"; substituted "election commissioners" for "commissioners of election" in (4); in (6), inserted "election" near the beginning, and substituted "election commissioners" for "commissioners of election" and "before the date" for "previous to the date"; in (9), substituted "or (c) has been convicted of a felony as described in this subsection, and not pardoned, then the election commission shall notify the candidate and give the candidate an opportunity to be heard. The election commission shall mail notice to the candidate at least three (3) business days before the hearing to the address provided by the candidate on the qualifying forms, and the committee shall attempt to contact the candidate by telephone, email and facsimile if the candidate provided this information on the forms. If the candidate fails to appear at the hearing or to prove that he or she meets all qualifications to hold the office subject to no contingencies, then the name of such candidate shall not be placed upon the ballot" for "or (c) has been convicted of a felony as described in this subsection, and not pardoned, then the name of such candidate shall not be placed upon the ballot" in (10), substituted "only one (1) person has duly qualified" for "there shall be only one (1) person who has duly qualified" and "that if not more than one (1) person" for "that if there shall be not more than one (1) person," and inserted "election" following "review by the"; and made gender neutral and minor stylistic changes.

**Cross References —**

Holding of local issue elections and the placement of local issues on regular or general election ballots, see § 23-15-375.

Procedures for contesting the qualifications of a person who has qualified pursuant to the provisions of this section as a candidate for any office elected at a general election, see § 23-15-963.

## JUDICIAL DECISIONS

### ANALYSIS

1. Where candidate resides.
2.-5. [Reserved for future use.]
6. Under former Section 23-5-133.

**1. Where candidate resides.**

Candidate was not eligible to run for the office of county superintendent of education because he was a resident of a separate school district; the candidate did not present any evidence that he was a qualified elector of the county school district, the county superintendent of education served as the director of all schools within the county school district, which were outside the separate school district where the candidate resided. Basil v. Browning, 175 So. 3d 1289, 2015 Miss. LEXIS 543 (Miss. 2015).

Candidate was a qualified candidate for the position of justice court judge, even though the candidate did not live within the election subdistrict where the candidate wished to run for office. Montgomery v. Lowndes County Democratic Exec. Comm., 969 So. 2d 1, 2007 Miss. LEXIS 329 (Miss. 2007).

**2.-5. [Reserved for future use.]**

**6. Under former Section 23-5-133.**

A candidate who ran in the first primary but withdrew from the second, run-off primary was not entitled to have his name placed upon the general election ballot, by petition, as an independent. Mississippi State Board of Election Comm'rs v. Meredith, 301 So. 2d 571, 1974 Miss. LEXIS 1664 (Miss. 1974).

Section 5 of the Federal Voting Rights Act of 1965 [52 USCS § 10304] which prevents the enforcement of "any voting qualification or prerequisite to voting, or standard, practice or procedure with respect to voting" different from that in force and effect Nov. 1, 1964, unless the state or political subdivision complies with one of the section's approval procedures, applied to the 1966 amendment to this section [Code 1942, § 3260], which (1) established a new rule that no person who had voted in a primary election might thereafter be placed on the ballot as an independent candidate in the general election; (2) changed the time for filing a petition as an independent candidate from 40 to 60 days before the general election; (3) increased the number of signatures of qualified electors needed for the independent qualifying petition; and (4) added a new provision that each qualifying elector who signed the independent qualifying petition had to personally sign the petition and include his polling precinct and county. Allen v. State Bd. of Elections, 393 U.S. 544, 89 S. Ct. 817, 22 L. Ed. 2d 1, 1969 U.S. LEXIS 2378 (U.S. 1969), limited, Ryder v. United States, 515 U.S. 177, 115 S. Ct. 2031, 132 L. Ed. 2d 136, 1995 U.S. LEXIS 4039 (U.S. 1995).

Section 5 of the Voting Rights Act of 1965 [52 USCS § 10304] is applicable to the 1966 Amendment of this section [Code 1942, § 3260], and approval of that Amendment cannot be implemented until the approval of the Attorney General of the United States has been obtained. Allen v. State Bd. of Elections, 393 U.S. 544, 89 S. Ct. 817, 22 L. Ed. 2d 1, 1969 U.S. LEXIS 2378 (U.S. 1969), limited, Ryder v. United States, 515 U.S. 177, 115 S. Ct. 2031, 132 L. Ed. 2d 136, 1995 U.S. LEXIS 4039 (U.S. 1995).

This section [Code 1942, § 3260], directed solely to the qualifications of candidates, is not governed by the Federal Voting Rights Act of 1965. Whitley v. Johnson, 296 F. Supp. 754, 1967 U.S. Dist. LEXIS 8895 (S.D. Miss. 1967).

Code 1942, § 3107 which provides a method whereby the state political party conventions may select two slates of presidential electors, one slate pledged to support the nominee of the national political party, and one slate unpledged offends no provision of the United States Constitution, for it expressly provides that nothing therein shall prohibit a slate of electors pledged to support the national party candidate from running on the same general election ballot, and this section [Code 1942, § 3260] enables such a slate to get on the ballot upon the petition of 1,000 voters. Gray v. Mississippi, 233 F. Supp. 139, 1964 U.S. Dist. LEXIS 7357 (N.D. Miss. 1964).

Failure to place upon the ballot the name of one duly nominated by petition renders the election void. Bowen v. Williams, 238 Miss. 57, 117 So. 2d 710, 1960 Miss. LEXIS 377 (Miss. 1960).

Participating in a primary election does not preclude one from becoming an independent candidate upon the petition of other participants. Bowen v. Williams, 238 Miss. 57, 117 So. 2d 710, 1960 Miss. LEXIS 377 (Miss. 1960).

Power to determine whose name is entitled to appear upon the ballot is vested not in the ballot commissioner alone but in the commissioners as a body. State ex rel. Rice v. Dillon, 197 Miss. 504, 19 So. 2d 918, 1944 Miss. LEXIS 315 (Miss. 1944).

Omission of one of two candidates from ballot on special election for district supervisor, although he was entitled to have his name appear thereon by virtue of having substantially complied with this section [Code 1942, § 3260], invalidated the election. State ex rel. Rice v. Dillon, 197 Miss. 504, 19 So. 2d 918, 1944 Miss. LEXIS 315 (Miss. 1944).

Although this section [Code 1942, § 3260] contemplates that the petition shall be presented to the ballot commissioner, this is merely directory and not mandatory. State ex rel. Rice v. Dillon, 197 Miss. 504, 19 So. 2d 918, 1944 Miss. LEXIS 315 (Miss. 1944).

Each of the three commissioners is under duty to report and present to the commissioners as a body all petitions which have been duly presented to him. State ex rel. Rice v. Dillon, 197 Miss. 504, 19 So. 2d 918, 1944 Miss. LEXIS 315 (Miss. 1944).

Prospective candidate for district supervisor substantially complied with requirements of this section [Code 1942, § 3260] so as to be entitled to have his name appear upon the ballot for special election to be held on January 25, where he presented his petition containing the names of more than 15 qualified electors of the district to one of the three county election commissioners at the latter's home shortly before sundown on January 10. State ex rel. Rice v. Dillon, 197 Miss. 504, 19 So. 2d 918, 1944 Miss. LEXIS 315 (Miss. 1944).

## OPINIONS OF THE ATTORNEY GENERAL

As long as the election date agreed upon by the city and the board of supervisors is not the date of the general election, then the sixty day notice requirement of the statute does not apply to the election authorized pursuant to House Bill 1868 in connection with a countywide referendum on the additional assessment of sales tax on food and beverages. 1998 Miss. Op. Att'y Gen. 271.

In an election for school board members in two different districts, if one district has only one qualified candidate and the other has two or more qualified candidates, if one office is unopposed but there is opposition in the other office, an election must be held for both offices and the election for the unopposed office may not be dispensed with in accordance with Section 23-15-359 (9). 2005 Miss. Op. Att'y Gen. 315.

A political candidate's nickname should not be used on ballots unless the officials in charge of the election determine, consistent with the facts, that the nickname is necessary to identify the candidate to the voters. 2007 Miss. Op. Att'y Gen. 153, 2007 Miss. AG LEXIS 117.

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 239-247.

26 Am. Jur. 2d, Elections § 207.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 41 (nominating petition).

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 91 (petition to change form and content of ballot).

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 92 (petition to require including of name of nominee on ballot).

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 93 (petition to require omission of name of ineligible candidate from ballot).

**CJS.**

29 C.J.S., Elections §§ 315–318, 463–465.

**Law Reviews.**

Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

## § 23-15-361. Names of municipal office candidates to be printed on ballot; filing of petition for municipal office; determination of candidate's qualifications; declaration of nominee in single candidate race.

(1) The municipal general election ballot shall contain the names of all candidates who have been put in nomination by the municipal primary election of any political party. There shall be printed on the ballots the names of all persons so nominated, whether the nomination be otherwise known or not, upon the written request of one or more of the candidates so nominated, or of any qualified elector who will make oath that he or she was a participant in the primary election, and that the person whose name is presented by him or her was nominated by such primary election. The municipal election commissioners who are required to have the ballots printed, shall also have printed on the ballot in any municipal general election the name of any candidate who, not having been nominated by a political party, shall have been requested to be a candidate for any office by a petition filed with the clerk of the municipality no later than 5:00 p.m. on the same date by which candidates for nomination in the municipal primary elections are required to pay the fee provided for in Section 23-15-309, and signed by not less than the following number of qualified electors:

(a) For an office elected by the qualified electors of a municipality or a municipal district having a population of one thousand (1,000) or more, not less than fifty (50) qualified electors.

(b) For an office elected by the qualified electors of a municipality or a municipal district having a population of less than one thousand (1,000), not less than fifteen (15) qualified electors.

(2) Unless the petition required above shall be filed no later than 5:00 p.m. on the same date by which candidates for nomination in the municipal primary election are required to pay the fee provided for in Section 23-15-309, the name of the person requested to be a candidate, unless nominated by a political party, shall not be placed upon the ballot. The ballot shall contain the names of each candidate for each municipal office, and the names shall be

listed under the name of the political party the candidate represents as provided by law and as certified to the municipal clerk by the municipal executive committee of such political party. In the event such candidate qualifies as an independent as herein provided, he or she shall be listed on the ballot as an independent candidate.

(3) The clerk of the municipality shall notify the municipal election commissioners of all persons who have filed petitions pursuant to subsection (1) of this section within two (2) business days of the date of filing.

(4) The ballot in elections to fill vacancies in municipal elective office shall contain the names of all persons who have qualified as required by Section 23-15-857.

(5) The municipal election commission shall determine whether each party candidate in the municipal general election is a qualified elector of the municipality, and of the ward if the office sought is a ward office and shall determine whether each candidate either meets all other qualifications to hold the office he or she is seeking or presents absolute proof that he or she will, subject to no contingencies, meet all qualifications on or before the date of the general or special election at which he or she could be elected to office. The municipal election commission also shall determine whether any candidate has been convicted of any felony in a court of this state, or has been convicted on or after December 8, 1992, of any offense in another state which is a felony under the laws of this state, or has been convicted of any felony in a federal court on or after December 8, 1992. Excepted from the above are convictions of manslaughter and violations of the United States Internal Revenue Code or any violations of the tax laws of this state unless such offense also involved misuse or abuse of his or her office or money coming into his or her hands by virtue of the office. If the municipal election commission finds that a candidate either (a) is not a qualified elector, (b) does not meet all qualifications to hold the office he or she seeks and fails to provide absolute proof, subject to no contingencies, that he or she will meet the qualifications on or before the date of the general or special election at which he or she could be elected, or (c) has been convicted of a felony as described above and not pardoned, then the election commission shall notify the candidate and give the candidate an opportunity to be heard. The election commission shall mail notice to the candidate at least three (3) business days before the hearing to the address provided by the candidate on the qualifying forms, and the committee shall attempt to contact the candidate by telephone, email and facsimile if the candidate provided this information on the forms. If the candidate fails to appear at the hearing or to prove he or she meets all qualifications to hold the office subject to no contingencies, then the name of the candidate shall not be placed upon the ballot.

(6) If after the deadline to qualify as a candidate for an office or after the time for holding any party primary election for an office, only one (1) person has duly qualified to be a candidate for the office in the general election the name of that person shall be placed on the ballot; provided, however, that if not more than one (1) person has duly qualified to be a candidate for each office on

the general election ballot, the election for all offices on the ballot shall be dispensed with and the municipal election commission shall declare each candidate elected without opposition if the candidate meets all the qualifications to hold the office as determined pursuant to a review by the election commission in accordance with the provisions of subsection (5) of this section and if the candidate has filed all required campaign finance disclosure reports as required by Section 23-15-807.

**HISTORY:**

Derived from 1972 Code § 23-5-134 [Laws, 1978, ch. 429, § 1; Laws, 1982, ch. 477, § 4; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 110; Laws, 2000, ch. 592, § 6; Laws, 2002, ch. 336, § 2; brought forward without change, Laws, 2016, ch. 380, § 8; Laws, 2017, ch. 441, § 79, eff from and after July 1, 2017.

**Editor's Notes —**

On July 28, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 592.

The United States Attorney General, by letter dated June 27, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2002, ch. 336.

Laws of 2002, ch. 336, §§ 3, 4, provide as follows:

"SECTION 3. The Attorney General of the State of Mississippi shall submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

"SECTION 4. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

**Amendment Notes —**

The 2017 amendment, in (1), substituted "commissioners who are required to have" for "commissioner designated to have" in the last sentence of the introductory paragraph, and inserted "or a municipal district" in (a) and (b); deleted the third sentence of (2), which read: "Provided further, however, that nothing in this section shall prohibit a person from qualifying as a nominee of a political party, or from requesting to be a candidate for the office by filing a petition, in the event of the death of a candidate for the office which makes it impossible to have an election contest"; substituted "election commissioners" for "commissioners of election" in (3); in (5), inserted election in the first sentence, and substituted "or (c) has been convicted of a felony as described above and not pardoned, then the election commission shall notify the candidate and give the candidate an opportunity to be heard. The election commission shall mail notice to the candidate at least three (3) business days before the hearing to the address provided by the candidate on the qualifying forms, and the committee shall attempt to contact the candidate by telephone, email and facsimile if the candidate provided this information on the forms. If the candidate fails to appear at the hearing or to prove he or she meets all qualifications to hold the office subject to no contingencies, then the name of the candidate" for "or (c) has been convicted of a felony as described above and not pardoned, then the name of the candidate"; in (6), substituted "only one (1) person has duly qualified" for "there shall be only one (1) person who has duly qualified" and "that if not more than one (1) person has duly" for "that if there shall be not more than one (1) person duly," and inserted "election" following "review by the"; and made gender neutral and minor stylistic changes.

**Cross References —**

Procedures for contesting the qualifications of a person who has qualified pursuant to the provisions of this section as a candidate for any office elected at a general election, see § 23-15-963.

## JUDICIAL DECISIONS

**1. Validity of petitions.**

Circuit court did not err in ordering a candidate's name be placed on a ballot because a statutory "petition filed by qualified electors" was wholly separate and distinct from the statutory requirements where the candidate was merely seeking to have his name printed on the mayoral ballot and where there was no contradictory evidence presented to contest the elector affidavits before the election commission. Election Comm'n v. Wallace, 143 So. 3d 557, 2014 Miss. LEXIS 368 (Miss. 2014).

### OPINIONS OF THE ATTORNEY GENERAL

Petitions filed by candidates containing only a legally sufficient number of signatures of qualified electors to qualify under proposed (not currently effective) ward lines were not valid at the time they were submitted, and could not be supplemented by additional signatures so that they would contain a legally sufficient number of signatures of qualified electors from the old, and currently still effective, ward lines. 2005 Miss. Op. Att'y Gen. 216.

Section 23-15-361 requires that signatures on municipal ward candidate petitions, to be valid, must be those of qualified electors of the ward for the office sought. 2005 Miss. Op. Att'y Gen. 216.

If a nominee meets all the qualifications to hold the office for which he was certified as a candidate and for which he was subsequently nominated, a municipal election commission may not lawfully refuse to place his name on a general or special election ballot based on an irregularity in the process of qualifying as a candidate in a party primary. 2006 Miss. Op. Att'y Gen. 599.

A political candidate's nickname should not be used on ballots unless the officials in charge of the election determine, consistent with the facts, that the nickname is necessary to identify the candidate to the voters. 2007 Miss. Op. Att'y Gen. 153, 2007 Miss. AG LEXIS 117.

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 239-247.

26 Am. Jur. 2d, Elections §§ 265, 296-299.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 91 (petition to change form and content of ballot).

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 92 (petition to require including of name of nominee on ballot).

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 94 (order declaring form of ballot improper and requiring new form of ballot).

**CJS.**

29 C.J.S., Elections §§ 315–318, 463–465.

**Law Reviews.**

Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

## § 23-15-363. Names of candidates who have not duly withdrawn not omitted from ballot.

After the proper officer has knowledge of or has been notified of the nomination, as provided, of any candidate for office, the officer shall not omit his name from the ballot, unless upon the written request of the candidate nominated, made at least ten (10) days before the election, and in no case after such ballot has been printed; and every ballot shall contain the names of all candidates nominated as specified, and not duly withdrawn.

**HISTORY:**

Derived from 1972 Code § 23-5-135 [Codes, 1892, § 3655; 1906, § 4162; Hemingway's 1917, § 6796; 1930, § 6232; 1942, § 3261; Laws, 1944, ch. 169; Laws, 1947, 1st Ex ch. 12; Laws, 1970, ch. 506, § 25; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 111, eff from and after January 1, 1987.

### JUDICIAL DECISIONS

#### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-5-135.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-5-135.**

An election commission's determination

whether a person is qualified as a candidate is one of fact, and therefore final. Powe v. Forrest County Election Com., 249 Miss. 757, 163 So. 2d 656, 1964 Miss. LEXIS 433 (Miss. 1964).

Mandamus will not lie to compel an election commission to place on the ballot the name of a person whom it has determined not to be qualified as a candidate. Powe v. Forrest County Election Com., 249 Miss. 757, 163 So. 2d 656, 1964 Miss. LEXIS 433 (Miss. 1964).

A county election commission has jurisdiction to determine the qualification as a candidate of persons certified to it as nominees of a political party. Powe v. Forrest County Election Com., 249 Miss. 757, 163 So. 2d 656, 1964 Miss. LEXIS 433 (Miss. 1964).

Omission of one of two candidates from ballot on special election for district supervisor, although he was entitled to have his name appear thereon by virtue of having substantially complied with Code 1942, § 3260, invalidated the election. State ex rel. Rice v. Dillon, 197 Miss. 504, 19 So. 2d 918, 1944 Miss. LEXIS 315 (Miss. 1944).

Supreme Court judicially knows that general election at which Congressmen are to be elected will be held Tuesday, November 8, 1932, and that prior to antecedent 15 days it cannot be legally known by Secretary of State as to names to be printed on ballots. Wood v. State, 169 Miss. 790, 142 So. 747, 1932 Miss. LEXIS 8 (Miss. 1932).

Person seeking nomination as political party's candidate at primary and defeated cannot have mandamus to get name placed on ticket. Election commissioners may be compelled to assemble and consider petition to put person's name on ticket, but their action cannot be controlled by mandamus. On adverse decision by election commissioners, petitioners to have name put on ticket should take bill of exceptions and appeal to circuit court. Ruhr v. Cowan, 146 Miss. 870, 112 So. 386, 1927 Miss. LEXIS 249 (Miss. 1927).

Candidate for board of supervisors procuring name on ballot, on petition of insufficient number of electors, held not material irregularity. Hunt v. Mann, 136 Miss. 590, 101 So. 369, 1924 Miss. LEXIS 123 (Miss. 1924).

## OPINIONS OF THE ATTORNEY GENERAL

A write-in candidate is appropriate only when one has qualified as a candidate for a particular office and subsequently dies, resigns, withdraws, or is removed as a candidate. 2001 Miss. Op. Att'y Gen. 163.

If a nominee withdraws for a legitimate non-political reason as defined in Section 23-15-317 and his sworn affidavit is approved by the State Board of Election Commissioners, the municipal party executive committee would then be required to name a substitute nominee. If a nominee withdraws and no affidavit is submitted and approved, said executive committee would have no authority to name a substitute nominee. In either case, the nominee has the right to withdraw his candidacy pursuant to Section 23-15-363. 2005 Miss. Op. Att'y Gen. 237.

## RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 265, 296, 297.

9 Am. Jur. Pl & Pr Forms, (Rev), Elections, Form 92 (petition to require including of name of nominee on ballot).

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 93 (petition to require omission of name of ineligible candidate from ballot).

**CJS.**

29 C.J.S., Elections §§ 474, 475.

## § 23-15-365. Write-in candidates; blank space on general, special and primary election ballots; applicability of section to elections conducted under Sections 23-15-974 through 23-15-985.

(1)(a) In general and special elections, one (1) blank space shall be left on each ballot under the title of each office to be voted for, and in the event of the death, resignation, withdrawal or removal of any candidate whose name was printed on the official ballot, the name of the candidate duly substituted in the place of such candidate who is qualified to hold the office may be written in the blank space by the voter.

(b) In all primary elections, one (1) blank space shall be left on each ballot under the title of each office to be voted for, and in the event of the death, resignation, or withdrawal of a candidate, the name of any individual who is qualified to hold the office may be written in the blank space by the voter.

(2) The provisions of subsection (1) of this section shall not apply to elections conducted under the Nonpartisan Judicial Election Act.

**HISTORY:**

Derived from 1972 Code § 25-5-137 [Codes, 1892, § 3653; 1906, § 4160; Hemingway's 1917, § 6794; 1930, § 6233; 1942, § 3262; Laws, 1984, ch. 439, § 2; repealed by Laws, 1986, ch. 495, § 337]; en, Laws, 1986, ch. 495, § 112; Laws, 2011, ch. 509, § 2; Laws, 2017, ch. 441, § 80, eff from and after July 1, 2017.

**Editor's Notes —**

By letter dated July 26, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2011, ch. 509.

**Amendment Notes —**

The 2017 amendment, rewrote (1), which read: "There shall be left on each ballot one (1) blank space under the title of each office to be voted for, and in the event of the death, resignation, withdrawal or removal of any candidate whose name shall have been printed on the official ballot, the name of the candidate duly substituted in the place of such candidate may be written in such blank space by the voter," and redesignated it (1)(a); and added (1)(b).

**Cross References —**

Nonpartisan Judicial Election Act, see §§ 23-15-974 through 23-15-985.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2.-5. [Reserved for future use.]
6. Under former Section 23-5-137.

**1. In general.**

When, under Miss. Code Ann. § 23-15-365, due to the death of the only candidate who had qualified before the qualifying deadline had passed, no name will be printed on the ballot, and the election will be only by write-in, the election will proceed in the same manner as if no one had qualified to run as a candidate before the qualifying deadline; the Legislature has provided for a write-in election to occur in the event of the death of "any candidate" who has qualified, and although the Legislature has imposed unique qualifications upon judicial candidates, it did not exclude judicial candidates from its provision for a write-in election in the event of a qualified candidate's death. Rayner v. Barbour, 47 So. 3d 128, 2010 Miss. LEXIS 572 (Miss. 2010).

Write-in election for a circuit court judge was proper under Miss. Code Ann. § 23-15-365 because the circuit judge passed away after qualifying for the November 2, 2010 election, and Miss. Code Ann. § 9-1-103 permitted the appointee judge to serve for the unexpired term with no requirement of a special election since the circuit judge died fewer than nine months before the expiration of his term; the use of the word "or" in Miss. Code Ann. § 9-1-103 means that an election under Miss. Code Ann. § 23-15-849(1) need not occur if there is so little time in the unexpired term that the appointee may legally serve for the unexpired term. Rayner v. Barbour, 47 So. 3d 128, 2010 Miss. LEXIS 572 (Miss. 2010).

The statute does not allow for a write-in candidate only where there is one person qualified for a particular office and that one qualified person dies, resigns, withdraws or removes his or her name after the printing of the primary ballot; write-in candidates are also allowed if the death of a candidate occurs prior to the printing of the ballot. Upton v. McKenzie, 761 So. 2d 167, 2000 Miss. LEXIS 136 (Miss. 2000).

**2.-5. [Reserved for future use.]**

**6. Under former Section 23-5-137.**

Votes cast at general election, by writing name on blank space, for one who was candidate at primary election but who was not nominated held illegal. May v. Young, 164 Miss. 35, 143 So. 703, 1932 Miss. LEXIS 220 (Miss. 1932).

That contestant's name was fraudulently kept off ballots did not authorize voters to write his name thereon. May v. Young, 164 Miss. 35, 143 So. 703, 1932 Miss. LEXIS 220 (Miss. 1932).

Voters may write name of candidate not nominated on the official ballot only in case of the death of a candidate. McKenzie v. Boykin, 111 Miss. 256, 71 So. 382, 1916 Miss. LEXIS 283 (Miss. 1916).

This section [Code 1942, § 3262] is constitutional. McKenzie v. Boykin, 111 Miss. 256, 71 So. 382, 1916 Miss. LEXIS 283 (Miss. 1916).

## OPINIONS OF THE ATTORNEY GENERAL

Where ballots were not printed for a primary election, this section was not invoked and there was no provision for the casting of write-in votes; therefore, any write-in votes cast in the primary election would not be valid. 1999 Miss. Op. Att'y Gen. 263.

## RESEARCH REFERENCES

**ALR.**

Elections: validity of state or local legislative ban on write-in votes. 69 A.L.R.4th 948.

**Am. Jur.**

26 Am. Jur. 2d, Elections § 295.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 91 (petition to change form and content of ballot).

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 94 (order declaring form of ballot improper and requiring new form of ballot).

## § 23-15-367. Printing of official ballot generally; order in which titles of various offices are to be listed on the ballot; furnishing of sample of official ballot; alphabetical arrangement in primary elections.

(1) Except as otherwise provided by Sections 23-15-974 through 23-15-985 and subsection (2) of this section, the size, print and quality of paper of the official ballot is left to the discretion of the officer charged with printing the official ballot.

(2) The titles for the various offices shall be listed in the following order:

(a) Candidates, electors or delegates for the following national offices:

(i) President;

(ii) United States Senator or United States Representative;

(b) Candidates for the following statewide office: Governor, Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, Auditor of Public Accounts, Commissioner of Agriculture and Commerce, Commissioner of Insurance;

(c) Candidates for the following state district offices: Mississippi Transportation Commissioner, Public Service Commissioner, District Attorney;

(d) Candidates for the following legislative offices: Senate and House of Representatives;

(e) Candidates for countywide office;

(f) Candidates for county district office.

The order in which the titles for the various offices are listed within paragraphs (e) and (f) is left to the discretion of the county election commissioners. Nominees of the political parties, qualified to conduct primary elections as defined in Section 23-15-291, shall be listed first alphabetically by the candidate's last name, followed by any other candidates listed alphabetically by last name.

(3) It is the duty of the Secretary of State, with the approval of the

Governor, to furnish the designated election commissioner of each county a sample of the official ballot, not less than fifty-five (55) days before the election, the general form of which shall be followed as nearly as practicable.

**HISTORY:**

Derived from 1972 Code § 23-5-139 [Codes, 1892, § 3656; 1906, § 4163; Hemingway's 1917, § 6797; 1930, § 6234; 1942, § 3263; Laws, 1970, ch. 506, § 26; Laws, 1978, ch. 391, § 2; Laws, 1984, ch. 401, § 5; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 113; Laws, 1994, ch 564, § 92; Laws, 2000, ch. 592, § 8; Laws, 2017, ch. 441, § 81, eff from and after July 1, 2017.

**Editor's Notes —**

The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 92.

On July 28, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 592.

**Amendment Notes —**

The 2017 amendment deleted "the arrangement of the names of the candidates, and the order in which the titles of the various offices shall be printed and" following "subsection (2) of this section" in (1); in (2), rewrote (a), which read: "Candidates for national office," and added (i) and (ii), rewrote (b) through (d), which read: "(b) Candidates for statewide office; (c) Candidates for state district office; (d) Candidates for legislative office," and rewrote the last paragraph, which read: "The order in which the titles for the various offices are listed within each of the categories listed in this subsection is left to the discretion of the officer charged with printing the official ballot"; inserted "election" preceding "commissioner" and substituted "before the election" for "prior to the election" in (3).

## JUDICIAL DECISIONS

### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-5-139.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-5-139.**

Secretary of State would not be compelled by mandamus in preparation of sample ballots to disregard designations of candidates for Congress by districts on ground Redistricting Act was void, where issuance of writ would operate to detriment of general public. Wood v. State, 169 Miss. 790, 142 So. 747, 1932 Miss. LEXIS 8 (Miss. 1932).

In mandamus proceeding to prohibit Secretary of State from making up ballot, it could not be presumed that Governor or Secretary of State would violate law. Wood v. State, 169 Miss. 790, 142 So. 747, 1932 Miss. LEXIS 8 (Miss. 1932).

## RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 289 —300.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 91 (petition to change form and content of ballot).

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 94 (order declaring form of ballot improper and requiring new form of ballot).

**CJS.**

29 C.J.S., Elections § 457–462.

**Law Reviews.**

Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

## § 23-15-369. Form and substance of proposed constitutional amendment or other public measure.

(1)(a) Whenever a constitutional amendment is submitted to the vote of the people, the substance of the amendment shall be printed in clear and unambiguous language on the ballot after the list of candidates, if any, followed by the word “YES” and also by the word “NO”, and shall be styled in such a manner that a “YES” vote will indicate approval of the proposal and a “NO” vote will indicate rejection.

(b) The substance of the amendment shall be an explanatory statement not exceeding seventy-five (75) words in length of the chief purpose of the measure. The statement shall be prepared by the Legislature and included in the concurrent resolution proposing the amendment to the Constitution. The statement shall avoid, whenever possible, the use of legal terminology or jargon and shall use instead, simple, ordinary, everyday language. The Secretary of State shall give each proposed constitutional amendment a designating number for convenient reference specific to the election in which the amendment appears on the ballot. This number designation shall appear on the ballot. Designating numbers shall be assigned in the order of filing or certification of the amendments. The Secretary of State shall furnish the designating number and the substance of each amendment to the circuit clerk of each county in which the amendment is to be voted on.

(c) The full text of each proposed constitutional amendment shall be published by the Secretary of State as provided for in Section 7-3-39, and shall be posted prominently in all polling places, with copies of the proposed amendment to be otherwise available at each polling place.

(2) Except as may be otherwise provided in subsection (1) of this section, whenever any public measure, question or matter that requires an affirmative or negative vote is submitted to a vote of the electors, the measure or matter shall be printed on the ballot and also the words “FOR” or “AGAINST” to be so arranged by the proper officer so that the voter can intelligently vote his or her preference.

**HISTORY:**

Derived from 1972 Code § 23-5-141 [Codes, 1892, § 3654; 1906, § 4161; Hemingway’s 1917, § 6795; 1930, § 6235; 1942, § 3264; repealed, Laws, 1986, ch. 495, § 335; repealed, Laws, 1986, ch. 501, § 2] and § 23-5-142 [Laws, 1979, ch. 502, § 1; repealed, Laws, 1986, ch. 495, § 33; repealed, Laws, 1986, ch. 501, § 2]; en, Laws, 1986, ch. 495, § 114; Laws, 1987, ch. 499, § 6; Laws, 1993, ch. 474, § 1; Laws, 2017, ch. 441, § 82, eff from and after July 1, 2017.

**Editor’s Notes —**

Laws of 1987, ch. 499, § 20, provides as follows:

“SECTION 20. If any section, paragraph, sentence, clause or phrase of this act is declared to be unconstitutional or void, or for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses or phrases shall be in no manner affected thereby but shall remain in full force and effect.”

On July 15, 1993, the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1993, ch. 474, § 1.

**Amendment Notes —**

The 2017 amendment, in (1), added “specific to the election in which the amendment appears on the ballot” at the end of the third sentence of (b), and deleted “Mississippi Code of 1972” following “Section 7-3-39” in (c); and made gender neutral and minor stylistic changes.

### JUDICIAL DECISIONS

**ANALYSIS**

1.-5. [Reserved for future use.]
6. Under former Section 23-5-141.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-5-141.**

Since a local option election under § 1610 of the Code of 1892 (Code of 1906, § 1777) is not an election controlled by the provisions of the constitution of 1890, the ballots used at such election do not have to conform to the provisions of the constitution of 1890; It is enough for the ballot to contain the words "for the sale" and "against the sale." Lehman v. Porter, 73 Miss. 216, 18 So. 920, 1895 Miss. LEXIS 109 (Miss. 1895).

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 287, 288.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 91 (petition to change form and content of ballot).

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Form 94 (order declaring form of ballot improper and requiring new form of ballot).

**CJS.**

29 C.J.S., Elections §§ 442, 466, 468, 469, 472, 473.

## § 23-15-371. Loss or destruction of official ballots.

In case the official ballots prepared shall be lost or destroyed, the election commissioners shall have like ballots furnished in place of those lost or destroyed, if time remain therefor. If from any cause there should be no official ballots or an insufficient number at a voting place, and not sufficient time in which to have them printed, the ballots may be written; but, if written by anyone except the voter alone for himself or herself, the names of all candidates shall be written thereon, without any mark or device by which one (1) name may be distinguished from another, and the ballots shall be marked by the voter as provided for printed ballots. If the poll manager designated fails to have the ballots at the voting place at the proper time, or if he or she fails to distribute them, the poll managers, or those of them present at the election, shall provide ballots, and select some suitable person to distribute them, who shall take the oath required of the poll managers, and distribute the ballots according to law.

**HISTORY:**

Derived from 1972 Code § 23-5-143 [Codes, 1892, § 3661; 1906, § 4168; Hemingway's 1917, § 6802; 1930, § 6236; 1942, § 3265; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 115; Laws, 2017, ch. 441, § 83, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment substituted "election commissioners" for "commissioners of election" in the first sentence; inserted "(1)" in the second sentence; inserted "poll" three times in the last sentence; and made gender neutral and minor stylistic changes.

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 300, 342, 343, 346, 347, 349, 359.

**CJS.**

29 C.J.S., Elections § 480.

## § 23-15-373. Report regarding lost ballots.

Within one (1) day after election day, the poll managers shall report to the election commissioners, under oath, as to the loss of official ballots, the number lost, and all facts connected therewith, which report the commissioners may deliver to the grand jury, if deemed advisable.

**HISTORY:**

Derived from 1972 Code § 23-5-145 [Codes, 1892, § 3662; 1906, § 4169; Hemingway's 1917, § 6803; 1930, § 6237; 1942, § 3266; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 116; Laws, 2017, ch. 441, § 84, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment substituted "poll managers" for "managers of election."

## § 23-15-375. Local issues.

Local issue elections may be held on the same date as any regular or general election. A local issue election held on the same date as the regular or general election shall be conducted in the same manner as the regular or general election using the same poll workers and the same equipment. A local issue may be placed on the regular or general election ballot pursuant to the provisions of Section 23-15-359. The provisions of this section and Section 23-15-359 with regard to local issue elections shall not be construed to affect any statutory requirements specifying the notice procedure and the necessary percentage of qualified electors voting in such an election which is needed for adoption of the local issue. Whether or not a local issue is adopted or defeated at a local issue election held on the same day as a regular or general election shall be determined in accordance with relevant statutory requirements regarding the necessary percentage of qualified electors who voted in the local issue election, and only those persons voting for or against the issue shall be counted in making that determination. As used in this section "local issue elections" include elections regarding the issuance of bonds, local option elections, elections regarding the levy of additional ad valorem taxes and other similar elections authorized by law that are called to consider issues that affect a single local governmental entity. As used in this section "local issue" means any issue that may be voted on in a local issue election.

**HISTORY:**

Laws, 1989, ch. 431, § 1; Laws, 2017, ch. 441, § 85, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment deleted "Mississippi Code of 1972" from the end of the third sentence; and made minor stylistic changes.

**Cross References —**

Authority of commissioners to have printed on ballots local issues authorized by this section, and the date local issues must be filed with the commissioners, see § 23-15-359.

# ARTICLE 15.

# VOTING SYSTEMS.

Subarticle A. General Provisions. 23-15-391
Subarticle B. Voting machines. 23-15-401
Subarticle C. Electronic Voting Systems. 23-15-461
Subarticle D. Optical Mark Reading Equipment. 23-15-501
Subarticle E. Direct recording electronic voting equipment (DRE). 23-15-531

## SUBARTICLE A.

## GENERAL PROVISIONS.

Sec.
23-15-391. Use of optical mark reading equipment or direct recording electronic voting equipment; use of paper ballot for special, municipal or runoff elections when determined to be less expensive.
23-15-393. Repealed.

### § 23-15-391. Use of optical mark reading equipment or direct recording electronic voting equipment; use of paper ballot for special, municipal or runoff elections when determined to be less expensive.

The board of supervisors of each county and the governing authorities of each municipality shall use optical mark reading equipment or direct recording electronic voting equipment that complies with the specifications provided by law. The election commissioners may conduct special and municipal elections, as well as any necessary runoff elections, by paper ballot when the election commissioners determine that administration of an election by paper ballot will be less expensive than administration of the same election by optical mark reading equipment or direct recording electronic voting equipment.

**HISTORY:**

Laws, 1986, ch. 495, § 117; Laws, 2005, ch. 534, § 15; Laws, 2017, ch. 441, § 86, eff from and after July 1, 2017.

**Editor's Notes —**

On June 6, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2005, ch. 534, § 15.

**Amendment Notes —**

The 2017 amendment rewrote the section, which read: "The board of supervisors of each county in the State of Mississippi shall utilize voting machines, electronic voting systems, optical mark reading equipment or direct recording electronic voting equipment which shall comply with the specifications provided by law. The election commissioners may designate elections to be administered by paper ballot where the election commissioners determine that administration of an election by paper ballot will be less expensive than administration of the same election by voting machines, electronic voting systems, optical mark reading equipment or direct recording electronic voting equipment."

## RESEARCH REFERENCES

**Law Reviews.**

Stavis, A century of struggle for black enfranchisement in Mississippi: From the Civil War to the congressional challenge of 1965-and beyond. 57 Miss. L. J. 591, December, 1987.

Rhodes, Enforcing the Voting Rights Act in Mississippi through litigation. 57 Miss. L. J. 705, December, 1987.

Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

### § 23-15-393. Repealed.

Repealed by Laws of 2017, ch. 441, § 194, effective from and after July 1, 2017.

§ 23-15-393. [Laws, 2005, ch. 534, § 17, eff June 6, 2005 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)]

**Editor's Notes —**

Former § 23-15-393 required that the number of voting machines to be used in each precinct in counties with a population of more than 250,000 be distributed in direct proportion to voter turnout in elections in the preceding two years.

## SUBARTICLE B.

## VOTING MACHINES.

Sec.
23-15-401 through 23-15-451. Repealed.

### §§ 23-15-401 through 23-15-451. Repealed.

Repealed by Laws of 2017, ch. 441, § 194, effective from and after July 1, 2017.

§ 23-15-401. [Derived from 1972 Code § 23-7-1 [Codes, 1942, § 3316-24; Laws, 1954, ch. 360, § 24; repealed by Laws, 1986, ch. 495, § 338]; en, Laws, 1986, ch. 495, § 118, eff from and after January 1, 1987.]

§ 23-15-403. [Derived from 1972 Code § 23-7-3 [Codes, 1942, § 3316-01; Laws, 1954, ch. 360, § 1; repealed by Laws, 1986, ch. 495, § 338]; en, Laws, 1986, ch. 495, § 119, eff from and after January 1, 1987.]

§ 23-15-405. [Derived from 1972 Code § 23-7-5 [Codes, 1942, § 3316-02; Laws, 1954, ch. 360, § 2; Laws, 1978, ch. 387, § 1; repealed by Laws, 1986, ch. 495, § 338]; en, Laws, 1986, ch. 495, § 120, eff from and after January 1, 1987.]

§ 23-15-407. [Derived from 1972 Code § 23-7-7 [Codes, 1942, § 3316-03; Laws, 1954, ch. 360, § 3; repealed by Laws, 1986, ch. 495, § 338]; en, Laws, 1986, ch. 495, § 121, eff from and after January 1, 1987.]

§ 23-15-409. [Derived from 1972 Code § 23-7-9 [Codes, 1942, § 3316-04; Laws, 1954, ch. 360, § 4; repealed by Laws, 1986, ch. 495, § 338]; en, Laws, 1986, ch. 495, § 122, eff from and after January 1, 1987.]

§ 23-15-411. [Derived from 1972 Code § 23-7-11 [Codes, 1942, § 3316-05; Laws, 1954, ch. 360, § 5; repealed by Laws, 1986, ch. 495, § 338]; en, Laws, 1986, ch. 495, § 123, eff from and after January 1, 1987.]

§ 23-15-413. [Derived from 1972 Code § 23-7-13 [Codes, 1942, § 3316-06; Laws, 1954, ch. 360, § 6; repealed by Laws, 1986, ch. 495, § 338]; en, Laws, 1986, ch. 495, § 124, eff from and after January 1, 1987.]

§ 23-15-415. [Derived from 1972 Code § 23-7-15 [Codes, 1942, § 3316-07; Laws, 1954, ch. 360, § 7; repealed by Laws, 1986, ch. 495, § 338]; en, Laws, 1986, ch. 495, § 125, eff from and after January 1, 1987.]

§ 23-15-417. [Derived from 1972 Code § 23-7-17 [Codes, 1942, § 3316-08; Laws, 1954, ch. 360, § 8; repealed by Laws, 1986, ch. 495, § 338]; en, Laws, 1986, ch. 495, § 126, eff from and after January 1, 1987.]

§ 23-15-419. [Derived from 1972 Code § 23-7-19 [Codes, 1942, § 3316-09; Laws, 1954, ch. 360, § 9; repealed by Laws, 1986, ch. 495, § 338]; en, Laws, 1986, ch. 495, § 127, eff from and after January 1, 1987.]

§ 23-15-421. [Derived from 1972 Code § 23-7-21 [Codes, 1942, § 3316-10; Laws, 1954, ch. 360, § 10; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 128, eff from and after January 1, 1987.]

§ 23-15-423. [Derived from 1972 Code § 23-7-23 [Codes, 1942, § 3316-11; Laws, 1954, ch. 360, § 11; repealed by Laws, 1986, ch. 495, § 338]; en, Laws, 1986, ch. 495, § 129; Laws, 2011, ch. 357, § 1, eff July 28, 2011 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)]

§ 23-15-425. [Derived from 1972 Code § 23-7-25 [Codes, 1942, § 3316-12; Laws, 1954, ch. 360, § 12; repealed by Laws, 1986, ch. 495, § 338]; en, Laws, 1986, ch. 495, § 130, eff from and after January 1, 1987.]

§ 23-15-427. [Derived from 1972 Code § 23-7-27 [Codes, 1942, § 3316-13; Laws, 1954, ch. 360, § 13; repealed by Laws, 1986, ch. 495, § 338]; en, Laws, 1986, ch. 495, § 131, eff from and after January 1, 1987.]

§ 23-15-429. [Derived from 1972 Code § 23-7-29 [Codes, 1942, § 3316-14; Laws, 1954, ch. 360, § 14; repealed by Laws, 1986, ch. 495, § 338]; en, Laws, 1986, ch. 495, § 132, eff from and after January 1, 1987.]

§ 23-15-431. [Derived from 1972 Code § 23-7-31 [Codes, 1942, § 3316-15; Laws, 1954, ch. 360, § 15; repealed by Laws, 1986, ch. 495, § 338]; en, Laws, 1986, ch. 495, § 133, eff from and after January 1, 1987.]

§ 23-15-433. [Derived from 1972 Code § 23-7-33 [Codes, 1942, § 3316-16; Laws, 1954, ch. 360, § 16; repealed by Laws, 1986, ch. 495, § 338]; en, Laws, 1986, ch. 495, § 134, eff from and after January 1, 1987.]

§ 23-15-435. [Derived from 1972 Code § 23-7-35 [Codes, 1942, § 3316-17; Laws, 1954, ch. 360, § 17; repealed by Laws, 1986, ch. 495, § 338]; en, Laws, 1986, ch. 495, § 135, eff from and after January 1, 1987.]

§ 23-15-437. [Derived from 1972 Code § 23-7-37 [Codes, 1942, § 3316-18; Laws, 1954, ch. 360, § 18; repealed by Laws, 1986, ch. 495, § 338]; en, Laws, 1986, ch. 495, § 136, eff from and after January 1, 1987.]

§ 23-15-439. [Derived from 1972 Code § 23-7-39 [Codes, 1942, § 3316-19; Laws, 1954, ch. 360, § 19; repealed by Laws, 1986, ch. 495, § 338]; en, Laws, 1986, ch. 495, § 137, eff from and after January 1, 1987.]

§ 23-15-441. [Derived from 1972 Code § 23-7-41 [Codes, 1942, § 3316-20; Laws, 1954, ch. 360, § 20; repealed by Laws, 1986, ch. 495, § 338]; en, Laws, 1986, ch. 495, § 138, eff from and after January 1, 1987.]

§ 23-15-443. [Derived from 1972 Code § 23-7-43 [Codes, 1942, § 3316-21; Laws, 1954, ch. 360, § 21; repealed by Laws, 1986, ch. 495, § 338]; en, Laws, 1986, ch. 495, § 139, eff from and after January 1, 1987.]

§ 23-15-445. [Derived from 1972 Code § 23-7-45 [Codes, 1942, § 3316-22; Laws, 1954, ch. 360, § 22; repealed by Laws, 1986, ch. 495, § 338]; en, Laws, 1986, ch. 495, § 140, eff from and after January 1, 1987.]

§ 23-15-447. [Derived from 1972 Code § 23-7-47 [Codes, 1942, § 3316-23; Laws, 1954, ch. 360, § 23; repealed by Laws, 1986, ch. 495, § 338]; en, Laws, 1986, ch. 495, § 141, eff from and after January 1, 1987.]

§ 23-15-449. [Derived from 1972 Code § 23-7-49 [Codes, 1942, § 3316-25; Laws, 1954, ch. 360, § 25; repealed by Laws, 1986, ch. 495, § 338]; en, Laws, 1986, ch. 495, § 142, eff from and after January 1, 1987.]

§ 23-15-451. [Derived from 1972 Code § 23-7-51 [Codes, 1942, § 3316-26; Laws, 1954, ch. 360, § 26; repealed by Laws, 1986, ch. 495, § 338]; en, Laws, 1986, ch. 495, § 143, eff from and after January 1, 1987.]

**Editor's Notes —**

Former § 23-15-401 provided the definitions of terms used in Chapter 15, Title 23.

Former § 23-15-403 authorized county boards of supervisors and governing authorities of municipalities to purchase or rent voting machines, and provided construction requirements for those voting machines. For present provisions relating to the purchase or rent of OMR equipment by county or municipal governing authorities, see § 23-15-505. For present provisions relating to the purchase or rent of DRE units by county or municipal governing authorities, see § 23-15-531.1.

Former § 23-15-405 related to the use of voting machines, purchased or rented, that met the requirements of Article 15, Chapter 15, Title 23.

Former § 23-15-407 related to the preservation and repair of voting machines.

Former § 23-15-409 related to the form of the ballots to be used in voting machines.

Former § 23-15-411 related to the provision of sample or instruction ballots.

Former § 23-15-413 required that two sets of official ballots be provided each polling place for use in voting machines and provided that all official ballots be returned at the close of the election.

Former § 23-15-415 related to the preparation and protection of voting machines.

Former § 23-15-417 related to the instruction of election managers and clerks.

Former § 23-15-419 required the exhibition of voting machines containing sample ballots for the purpose of providing instruction on the use of the machine.

Former § 23-15-421 related to the preparation and delivery of official ballots.

Former § 23-15-423 related to the size of voting precincts and the minimum number of voting machines to be used in each primary or general election.

Former § 23-15-425 required the replacement of official ballots that cannot be delivered in time for use on election day or are lost, destroyed or stolen.

Former § 23-15-427 related to the procedure to be used if voting machines became inoperable during the time the polls were open.

Former § 23-15-429 related to the preparation of the polling place and voting machines for opening the polls.

Former § 23-15-431 related to voting by irregular ballots for persons not appearing on voting machines as nominated candidates.

Former § 23-15-433 related to the arrangement of the polling room and who may be present in the polling room during elections.

Former § 23-15-435 related to the casting of votes.

Former § 23-15-437 related to the instruction of voters at the polling place on election day.

Former § 23-15-439 provided that the provisions of election law relating to assistance to be given to blind or physically disabled voters also applied where voting machines were used.

Former § 23-15-441 related to the procedure for closing the polls, reading and announcing the vote and the statement of canvass.

Former § 23-15-443 related to locking the counter compartment and securing irregular ballots.

Former § 23-15-445 related to securing the keys to the voting machines and storing the machines.

Former § 23-15-447 provided penalties for the unlawful possession of a voting machine or voting machine keys and for tampering with a voting machine.

Former § 23-15-449 related to the applicability of election laws then in force and provided that absentee ballots would be voted a then provided by law.

Former § 23-15-451 provided that Sections 23-15-401 through 23-15-451 were supplemental and in addition to the election laws then in effect or as amended.

# SUBARTICLE C.

# ELECTRONIC VOTING SYSTEMS.

Part 1. General Provisions..
Part 2. Training on Use of Electronic Voting Equipment..

## PART 1.
## GENERAL PROVISIONS

Sec.
23-15-461 through 23-15-485. Repealed.

### §§ 23-15-461 through 23-15-485. Repealed.

Repealed by Laws of 2017, ch. 441, § 195, effective from and after July 1, 2017.

§ 23-15-461. [Derived from 1972 Code § 23-7-301 [Codes, 1942, § 3316-31; Laws, 1966, ch. 609, § 1; repealed by Laws, 1986, ch. 495, § 339]; en, Laws, 1986, ch. 495, § 144; Laws, 2002, ch. 529, § 2, eff July 22, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)]

§ 23-15-463. [Derived from 1972 Code § 23-7-303 [Codes, 1942, § 3316-32; Laws, 1966, ch. 609, § 2; repealed by Laws, 1986, ch. 495, § 339]; en, Laws, 1986, ch. 495, § 145, eff from and after January 1, 1987.]

§ 23-15-465. [Derived from 1972 Code § 23-7-305 [Codes, 1942, § 3316-33; Laws, 1966, ch. 609, § 3; repealed by Laws, 1986, ch. 495, § 339]; en, Laws, 1986, ch. 495, § 146, eff from and after January 1, 1987.]

§ 23-15-467. [Derived from 1972 Code § 23-7-307 [Codes, 1942, § 3316-34; Laws, 1966, ch. 609, § 4; repealed by Laws, 1986, ch. 495, § 339]; en, Laws, 1986, ch. 495, § 147, eff from and after January 1, 1987.]

§ 23-15-469. [Derived from 1972 Code § 23-7-309 [Codes, 1942, § 3316-35; Laws, 1966, ch. 609, § 5; repealed by Laws, 1986, ch. 495, § 339]; en, Laws, 1986, ch. 495, § 148, eff from and after January 1, 1987.]

§ 23-15-471. [Derived from 1972 Code § 23-7-311 [Codes, 1942, § 3316-36; Laws, 1966, ch. 609, § 6; Laws, 1972, ch. 512, § 2; repealed by Laws, 1986, ch. 495, § 339]; en, Laws, 1986, ch. 495, § 149, eff from and after January 1, 1987.]

§ 23-15-473. [Derived from 1972 Code § 23-7-313 [Codes, 1942, § 3316-37; Laws, 1966, ch. 609, § 7; repealed by Laws, 1986, ch. 495, § 339]; en, Laws, 1986, ch. 495, § 150, eff from and after January 1, 1987.]

§ 23-15-475. [Derived from 1972 Code § 23-7-315 [Codes, 1942, § 3316-38; Laws, 1966, ch. 609, § 8; repealed by Laws, 1986, ch. 495, § 339]; en, Laws, 1986, ch. 495, § 151, eff from and after January 1, 1987.]

§ 23-15-477. [Derived from 1972 Code § 23-7-317 [Codes, 1942, § 3316-39; Laws, 1966, ch. 609, § 9; Laws, 1972, ch. 512, § 1; repealed by Laws, 1986, ch. 495, § 339]; en, Laws, 1986, ch. 495, § 152, eff from and after January 1, 1987.]

§ 23-15-479. [Derived from 1972 Code § 23-7-319 [Codes, 1942, § 3316-40; Laws, 1966, ch. 609, § 10; repealed by Laws, 1986, ch. 495, § 339]; en, Laws, 1986, ch. 495, § 153, eff from and after January 1, 1987.]

§ 23-15-481. [Derived from 1972 Code § 23-7-321 [Codes, 1942, § 3316-41; Laws, 1966, ch. 609, § 11; repealed by Laws, 1986, ch. 495, § 339]; en, Laws, 1986, ch. 495, § 154, eff from and after January 1, 1987.]

§ 23-15-483. [Derived from 1972 Code § 23-7-323 [Codes, 1942, § 3316-42; Laws, 1966, ch. 609, § 12; repealed by Laws, 1986, ch. 495, § 339]; Laws, 1986, ch. 495, § 155; Laws, 2002, ch. 529, § 3, eff July 29, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)]

§ 23-15-485. [Derived from 1972 Code § 23-7-325 [Codes, 1942, § 3316-43; Laws, 1966, ch. 609, § 13; repealed by Laws, 1986, ch. 495, § 339]; en, Laws, 1986, ch. 495, § 156, eff from and after January 1, 1987.]

**Editor's Notes —**

Former § 23-15-461 provided definitions for terms used in Subarticle C, Article 15, Chapter 15, Title 23.

Former § 23-15-463 authorized boards of supervisors and governing authorities of municipalities to purchase or rent electronic voting systems and to change the boundaries of precincts within which the systems were used, provided §§ 23-15-461 through 23-15-485 controlled in elections in which electronic voting systems were used, and provided that absentee ballots were to be voted as provided by law. For present provisions relating to the purchase or rent of OMR equipment by county or municipal governing authorities, see § 23-15-505. For present provisions relating to the purchase or rent of DRE units by county or municipal governing authorities, see § 23-15-531.1

Former § 23-15-465 related to the construction of electronic voting systems.

Former § 23-15-467 related to the use of voting equipment.

Former § 23-15-469 related to the form of the ballots and the ballot labels, the posting of sample ballots and instructions and write-in ballots.

Former § 23-15-471 related to the preparation and delivery of necessary forms and supplies.

Former § 23-15-473 related to the storage, maintenance and repair of voting devices and the use of unofficial ballots when devices malfunctioned.

Former § 23-15-475 required instruction of polling officers and the public display of voting devices.

Former § 23-15-477 related to opening and closing the polls, instructing voters, and spoiled ballots.

Former § 23-15-479 related to the report of the number of voters who voted, the sealing and delivery of the ballot box, and the return of records and supplies.

Former § 23-15-481 related to the testing of the automatic tabulating equipment prior to the start of the count of ballots.

Former § 23-15-483 related to counting the vote.

Former § 23-15-485 authorized the Secretary of State to issue supplementary instructions and procedures for the use of electronic voting systems and the commissioners of election to make all necessary provisions for the conduct of elections with approved electronic voting systems.

## PART 2.
## TRAINING ON USE OF ELECTRONIC VOTING EQUIPMENT

Sec.
23-15-491. Repealed.

### § 23-15-491. Repealed.

Repealed by its own terms, effective July 1, 2009.

§ 23-15-491. [Laws, 2006, ch. 592, § 1, eff June 29, 2006 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)]

**Editor's Notes —**

Former § 23-15-491 authorized commissioners of election to sponsor and conduct training sessions to educate qualified electors regarding the operation of electronic voting systems.

## SUBARTICLE D.

## OPTICAL MARK READING EQUIPMENT.

| Sec. | |
|---|---|
| 23-15-501. | Repealed. |
| 23-15-503. | Definitions. |
| 23-15-505. | Authority to purchase or rent OMR equipment; applicable law. |
| 23-15-507. | Construction of OMR equipment. |
| 23-15-509. | Repealed. |
| 23-15-511. | Form of ballots; posting of sample ballots; ballot security envelopes. |
| 23-15-513. | Preparation and delivery of necessary forms and supplies; minimum number of ballots to be printed. |
| 23-15-515. | Storage, maintenance, repair and preparation of equipment. |
| 23-15-517. | Opening and closing polls; instructing voters; spoiled ballots. |
| 23-15-519. | Ballot accounting report; tamper-evident seals for ballot boxes; seal log; delivery of ballot box; return of records and supplies. |
| 23-15-521. | Testing of OMR equipment. |
| 23-15-523. | Counting vote. |
| 23-15-525. | Authority of Secretary of State and election commissioners for the safe and efficient use of OMR equipment; resolution board for rejected ballots. |

### § 23-15-501. Repealed.

Repealed by Laws of 2017, ch. 441, § 195, effective from and after July 1, 2017.

§ 23-15-501. [Derived from 1972 Code § 23-7-501 [Laws, 1984, ch. 509, § 1; repealed by Laws, 1986, ch. 495, § 340]; en, Laws, 1986, ch. 495, § 157, eff from and after January 1, 1987.]

**Editor's Notes —**

Former § 23-15-501 provided that §§ 23-15-501 through 23-15-525 were supplemental and in addition to the election laws then in effect or as amended.

### § 23-15-503. Definitions.

As used in this subarticle, unless otherwise specified:

(a) "Optimal mark reading (OMR)" means a method of capturing data electronically into a computer system.

(b) "Optical mark reading equipment (OMR)" means an apparatus that reads pen and pencil marks made in pre-defined positions on paper ballots to automatically examine and count votes.

(c) "Counting center" means one or more locations used for the automatic counting of ballots.

(d) "Marking device" means a pen or pencil that the voters use to record their paper ballots, which is readable by the OMR equipment.

(e) "Ballot" means a paper ballot on which votes are recorded by means of marking the ballot with a marking device.

**HISTORY:**

Derived from 1972 Code § 23-7-503 [Laws, 1984, ch. 509, § 2; repealed by Laws, 1986, ch. 495, § 340]; en, Laws, 1986, ch. 495, § 158; Laws, 2017, ch. 441, § 87, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment rewrote (a), which read: " 'OMR' means optical mark reading"; rewrote (b), which read: " 'Optical mark reading equipment (OMR)' means any apparatus necessary to automatically examine and count votes as designated on paper ballots"; deleted (d), which read: " 'Electronic voting systems' means a system in which votes are recorded on a paper ballot by means of marking, and such votes are subsequently counted and tabulated by optical mark reading equipment at one or more counting centers" and redesignated former (e) and (f) as (d) and (e); rewrote (d), which read: " 'Marking device' means a pen or pencil which the voters use to record their votes by marking a paper ballot"; and made minor stylistic changes.

## § 23-15-505. Authority to purchase or rent OMR equipment; applicable law.

The board of supervisors of any county and the governing authorities of any municipality are hereby authorized and empowered, in their discretion, to purchase or rent OMR equipment that meets the requirements of Section 23-15-507 and may use such system in all or a part of the precincts within its boundaries. The provisions of this chapter shall be controlling with respect to elections in which OMR equipment is used, and shall be liberally construed so as to carry out the purpose of this chapter. The provisions of the election law relating to the conduct of elections with paper ballots, insofar as they are applicable, shall apply.

**HISTORY:**

Derived from 1972 Code § 23-7-505 [Laws, 1984, ch. 509, § 3; repealed by Laws, 1986, ch. 495, § 340]; en, Laws, 1986, ch. 495, § 159; Laws, 2017, ch. 441, § 88, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment rewrote the section, which read: "The board of supervisors of any county in the State of Mississippi and the governing authorities of any municipality in the State of Mississippi are hereby authorized and empowered, in their discretion, to purchase or rent optical mark reading equipment used in an electronic voting system which meets the requirements of Section 23-15-507 and may use such system in all or a part of the precincts within its boundaries. It may enlarge, consolidate or alter the boundaries of precincts where an electronic voting system is used. The provisions of this chapter shall be controlling with respect to elections where any OMR system is used, and shall be liberally construed so as to carry out the purpose of this chapter. The provisions of the election law relating to the conduct of elections with paper ballots, that are to be manually tabulated, insofar as they are applicable and not in conflict with the efficient conduct of the systems, shall apply."

**Cross References —**

Use of paper ballots for special, municipal and runoff elections, see § 23-15-391.

## § 23-15-507. Construction of OMR equipment.

No OMR equipment shall be acquired or used in accordance with this chapter unless it shall:

(a) Permit eligible voters to vote at any election for all persons for whom they are lawfully entitled to vote; to vote for as many persons for an office as they are lawfully entitled to vote; to vote for or against any ballot initiative, measure or other local issue upon which they are lawfully entitled to vote;

(b) The OMR equipment shall be capable of rejecting choices marked on the ballot if the number of choices exceeds the number that the voter is entitled to vote for the office or on the measure;

(c) Permit each voter, in presidential elections, by one (1) mark to vote for the candidates of that party for President, Vice President, and their presidential electors, or to vote individually for the electors of their choice when permitted by law;

(d) Permit each voter, in other than primary elections, to vote for the nominees of one or more parties and for independent candidates;

(e) Permit each voter to vote for candidates only in the primary in which he or she is qualified to vote;

(f) Permit each voter to vote for persons whose names are not on the printed ballot;

(g) Be suitably designed for the purpose used, of durable construction, and may be used safely, efficiently and accurately in the conduct of elections and the counting of ballots;

(h) Be provided with means for sealing the ballots after the close of the polls;

(i) When properly operated, record correctly and count accurately all votes cast; and

(j) Provide the voter with a set of instructions that will be displayed in such a way that a voter may readily learn the method of voting.

**HISTORY:**

Derived from 1972 Code § 23-7-507 [Laws, 1984, ch. 509, § 4; repealed by Laws, 1986, ch. 495, § 340]; en, Laws, 1986, ch. 495, § 160; Laws, 2017, ch. 441, § 89, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment substituted "OMR equipment" for "optical mark reading system" in the introductory paragraph; in (a), substituted "eligible voters" for "each voter," inserted "lawfully" twice, and substituted "any ballot initiative, measure or other local issue" for "any questions"; rewrote (b), which read: "The OMR tabulating equipment shall be capable of rejecting choices recorded on the ballot if the number of choices exceeds the number which the voter is entitled to vote for the office or on the measure"; substituted "candidates" for "nominees" at the end of (d); deleted "and the last voter has voted" following "close of the polls" in (h); substituted "displayed in such a way that" for "so displayed that" in (j); and made gender neutral and minor stylistic changes.

**Cross References —**

Provision that counties and municipalities may purchase or rent optical mark reading equipment used in an electronic voting system which meets the requirements of this section, see § 23-15-505.

RESEARCH REFERENCES

**Am. Jur.**
26 Am. Jur. 2d, Elections §§ 284-300, 307.

**CJS.**
29 C.J.S., Elections §§ 457–462, 540.

## § 23-15-509. Repealed.

Repealed by Laws of 2017, ch. 441, § 196, effective from and after July 1, 2017.

§ 23-15-509. [Derived from 1972 Code § 23-7-509 [Laws, 1984, ch. 509, § 5; repealed by Laws, 1986, ch. 495, § 340]; en, Laws, 1986, ch. 495, § 161, eff from and after January 1, 1987.]

**Editor's Notes —**
Former § 23-15-531.7 required public exhibition and demonstration of the use of the DRE units.

## § 23-15-511. Form of ballots; posting of sample ballots; ballot security envelopes.

The ballots shall, as far as practicable, be in the same order of arrangement as provided for paper ballots that are to be counted manually, except that the information may be printed in vertical or horizontal rows. Nothing in this chapter shall be construed as prohibiting the information being presented to the voters from being printed on both sides of a single ballot. In those years when a special election shall occur on the same day as the general election, the names of candidates in any special election and the general election shall be placed on the same ballot by the election commissioners or officials in charge of the election, but the general election candidates shall be clearly distinguished from the special election candidates. At any time a special election is held on the same day as a party primary election, the names of the candidates in the special election may be placed on the same ballot by the officials in charge of the election, but shall be clearly distinguished as special election candidates or primary election candidates.

Ballots shall be printed in plain clear type in black ink and upon clear white materials of such size and arrangement as to be compatible with the OMR equipment. Absentee ballots shall be prepared and printed in the same form and shall be on the same size and texture as the regular official ballots, except that they shall be printed on tinted paper; or the ink used to print the ballots shall be of a color different from that of the ink used to print the regular official ballots. Arrows may be printed on the ballot to indicate the place to mark the ballot, which may be to the right or left of the names of candidates and propositions. The titles of offices may be arranged in vertical columns on the ballot and shall be printed above or at the side of the names of candidates so as to indicate clearly the candidates for each office and the number to be elected. In case there are more candidates for an office than can be printed in one (1) column, the ballot shall be clearly marked that the list of candidates is continued on the following column. The names of candidates for each office shall be printed in vertical columns, grouped by the offices that they seek. In partisan elections, the party designation of each candidate, which may be abbreviated, shall be printed following his or her name.

One (1) sample ballot, which shall be a facsimile of the official ballot and instructions to the voters, shall be provided for each precinct and shall be posted in each polling place on election day.

A separate ballot security envelope or suitable equivalent in which the voter can place his or her ballot after voting, shall be provided to conceal the choices the voter has made. Absentee voters will receive a similar ballot security envelope provided by the county in which the absentee voter will insert their voted ballot, which then can be inserted into a return envelope to be mailed back to the election official. Absentee ballots will not be required to be folded when a ballot security envelope is provided.

**HISTORY:**

Derived from 1972 Code § 23-7-511 [Laws, 1984, ch. 509, § 6; repealed by Laws, 1986, ch. 495, § 340]; en, Laws, 1986, ch. 495, § 162; Laws, 2017, ch. 441, § 90, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment, in the first paragraph, substituted "election commissioners" for "commissioners of election" in the third sentence, and inserted "by the official in charge of the election" in the last sentence; substituted "OMR equipment" for "OMR tabulating equipment" in the first sentence of the second paragraph; in the third paragraph, substituted "One (1) sample ballot" for "Two (2) sample ballots" and made related changes; and made gender neutral and minor stylistic changes.

**RESEARCH REFERENCES**

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 284-300, 307.

**CJS.**

29 C.J.S., Elections §§ 457–462, 540.

### § 23-15-513. Preparation and delivery of necessary forms and supplies; minimum number of ballots to be printed.

(1) The official ballots, sample ballots and other necessary forms and supplies of the forms and description required by this chapter or required for the conduct of elections with an electronic voting system shall be prepared and furnished by the same official, in the same manner and time, and delivered to the same officials as provided by law with respect to paper ballots that are to be counted manually.

(2) For each primary election, the number of official ballots that shall be printed by each executive committee shall be not less than one hundred twenty-five percent (125%) of the highest number of votes cast in a comparable primary election conducted by the same political party in the preceding ten (10) years.

(3) For each general election, the number of official ballots that shall be printed shall be a number equal to not less than sixty percent (60%) of the registered voters eligible to vote in the election.

**HISTORY:**

Derived from 1972 Code § 23-7-513 [Laws, 1984, ch. 509, § 7; repealed by Laws, 1986, ch. 495, § 340]; en, Laws, 1986, ch. 495, § 163; Laws, 2011, ch. 357, § 2; Laws, 2017, ch. 441, § 91, eff from and after July 1, 2017.

**Editor's Notes —**

By letter dated July 28, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2011, ch. 357.

**Amendment Notes —**

The 2017 amendment rewrote (2), which read: "For each primary or general election the number of official ballots that shall be printed shall be a number that is equal to not less than seventy-five percent (75%) of the registered voters eligible to vote in the election"; and added (3).

RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections § 307.

**CJS.**

29 C.J.S., Elections § 529.

## § 23-15-515. Storage, maintenance, repair and preparation of equipment.

The circuit clerk shall be the custodian of OMR equipment acquired by the county, who shall be charged with the proper storage, maintenance and repair of the OMR equipment. The municipal clerk shall be the custodian of the OMR equipment acquired by the municipality, and shall be charged with the proper storage, maintenance and repair of the OMR equipment. The custodian or the officials in charge of the election shall repair or replace any OMR equipment which fails to function properly on election day.

**HISTORY:**

Derived from 1972 Code § 23-7-515 [Laws, 1984, ch. 509, § 8; repealed by Laws, 1986, ch. 495, § 340]; en, Laws, 1986, ch. 495, § 164; Laws, 2017, ch. 441, § 92, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment rewrote the section, which read: "The circuit court clerk shall be the custodian of OMR tabulating equipment acquired by the county, who shall be charged with the proper storage, maintenance and repair of the OMR equipment and preparation of them for tabulating prior to elections. The custodian shall repair or replace any tabulating equipment which fails to function properly on election day. The clerk of any municipality which acquires OMR tabulating equipment shall be the custodian of such equipment and perform the same functions."

RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections § 307.

**CJS.**

29 C.J.S., Elections § 529.

## § 23-15-517. Opening and closing polls; instructing voters; spoiled ballots.

At least one (1) hour before the opening of the polls, the officials in charge of the election shall arrive at the polling place and set up the voting booths so that they will be in clear view of the poll managers; the poll managers shall examine the ballots to verify that they have the correct ballots for their precinct and check the supplies, records and forms, and post the sample ballots and instructions to the voters. They shall also inspect the ballot boxes to ensure they contain only voted absentee ballots in their envelopes with the required applications, and then seal the box for voting.

Each voter shall receive written and/or verbal instructions by the poll managers instructing the voter how to properly vote the paper ballot before the voter enters the voting booth. If any voter needs additional instructions after entering the voting booth, two (2) poll managers may, if necessary, enter the booth and give him or her such additional instructions. If any voter spoils a ballot the voter may obtain others, one (1) at a time, not exceeding three (3) in all, upon returning each spoiled ballot. The word "SPOILED" shall be written across the face of the ballot and it shall be deposited into the sealed ballot box. When the polls close once the last ballot has been cast or at 7:00 p.m., whichever is later, the poll managers shall break the seal on the ballot box to process the absentee ballots. Ballots marked as spoiled shall be bundled together and placed in an envelope designated for spoiled ballots. Once the polls have officially closed, the envelope that contains the spoiled ballots and the unused ballots shall be placed in the ballot box or other container provided for that purpose which shall be sealed and returned to the officials in charge of the election.

**HISTORY:**

Derived from 1972 Code § 23-7-517 [Laws, 1984, ch. 509, § 9; repealed by Laws, 1986, ch. 495, § 340]; en, Laws, 1986, ch. 495, § 165; Laws, 2017, ch. 441, § 93, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment rewrote the first paragraph, which read: "At least thirty (30) minutes before the opening of the polls, the voting precinct election officers shall arrive at the polling place and set up the voting booths so that they will be in clear view of the election officers; the voting precinct election officers shall examine the ballots to verify that they have the correct ballots for their precinct and check the supplies, records and forms, and post the sample ballots and instruction to the voter. They shall also inspect the ballot boxes to insure they are empty, and then seal the box for voting"; and rewrote the second paragraph, which read: "Each voter shall receive written and/or verbal instructions by the voting precinct election official instructing the voter how to properly vote the paper ballot before they enter the voting booth. If any voter needs additional instructions after entering the voting booth, two (2) election officers may, if necessary, enter the booth and give him such additional instructions. If any voter spoils a ballot he may obtain others, one (1) at a time, not exceeding three (3) in all, upon returning each spoiled ballot. The word 'SPOILED' shall be written across the face of the ballot and it shall be placed in the envelope for spoiled ballots. As soon as the polls have been closed and the last qualified voter has voted, the ballots shall be sealed against further voting. All unused ballots shall be placed in a container provided for that purpose which shall be sealed and returned to the officials in charge of the election."

## RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 307, 319-380.

**CJS.**

29 C.J.S., Elections §§ 486–516, 529.

## § 23-15-519. Ballot accounting report; tamper-evident seals for ballot boxes; seal log; delivery of ballot box; return of records and supplies.

The poll managers shall prepare a ballot accounting report that documents the number of voters who have voted, as indicated by the receipt book and the number of ballots used in the election. The poll managers shall place the report in the ballot box, with the seal logs, receipt books, absentee ballots, affidavit ballots, challenged ballots, curbside ballots, emergency ballots, spoiled ballots and unused ballots, which thereupon shall be sealed with a tamper-evident seal, which is a seal that has been designed in such a way to allow someone to easily detect any tampering, so that no additional ballots may be deposited or removed from the ballot box. The poll managers, while they have possession of the election materials, and the officials in charge of the election, once the poll managers have delivered the ballot box to the counting center or other designated place, shall be required to keep a seal log to document each time a tamper-evident seal for a ballot box is opened or changed. The seal log shall require the name of the person who opened the seal, the old seal number, the new seal number, the date the seal was opened and the purpose for opening the seal. The receiving and returning poll manager shall deliver the ballot box to the counting center or other designated place and receive a signed, numbered receipt therefor. The poll books and other records and supplies shall be returned as directed by the officials in charge of the election. Failure to strictly comply with the provisions of this section shall not result in a presumption of fraud.

**HISTORY:**

Derived from 1972 Code § 23-7-519 [Laws, 1984, ch. 509, § 10; repealed by Laws, 1986, ch. 495, § 340]; en, Laws, 1986, ch. 495, § 166; Laws, 2017, ch. 441, § 94, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment rewrote the first sentence, which read: "The managers shall prepare a report in duplicate of the number of voters who have voted, as indicated by the poll list, and shall place this report in the ballot box, which thereupon shall be sealed with a paper seal signed by the managers so that no additional ballots may be deposited or removed from the ballot box," and divided it into the present first and second sentences; added the third and fourth sentences; rewrote the fifth and sixth sentences, which read: "The manager or other person who acts as returning officer shall forthwith deliver the ballot box to the counting center or other designated place and receive a signed, numbered receipt therefor. The poll list, register of voters, unused ballots, spoiled ballots, and other records and supplies, shall be returned as directed by the officials in charge of the election" and added the last sentence.

## § 23-15-521. Testing of OMR equipment.

Before counting the ballots, the election commissioners, or their designees, shall have the OMR equipment tested to ascertain that it will accurately count the votes cast for all offices and on all measures. Representatives of the political parties, candidates, the press and the general public may witness the test conducted on the OMR equipment. The test shall be conducted by processing a preaudited group of ballots so marked as to record a predetermined number of valid votes for each candidate and on each measure, and shall include for each office one or more ballots that have votes in excess of the number allowed by law in order to test the ability of the OMR equipment to reject such votes. If any error is detected, the cause of the error shall be ascertained and corrected and an errorless count shall be made and certified to by the officials in charge before the count is started. On completion of the count, the programs, test materials and ballots shall be sealed and retained as provided for paper ballots.

**HISTORY:**

Derived from 1972 Code § 23-7-521 [Laws, 1984, ch. 509, § 11; repealed by Laws, 1986, ch. 495, § 340]; en, Laws, 1986, ch. 495, § 167; Laws, 2017, ch. 441, § 95, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment substituted "OMR equipment" for "OMR tabulating equipment" in the first, second and third sentences; substituted "Before counting the ballots, the election commissioners, or their designees" for "Prior to the start of the count of the ballots, the commissioners of elections or officials in charge of the election" in the first sentence; substituted "the cause of the error" for "the cause therefor" in the next-to-last sentence; and made a minor stylistic change.

## § 23-15-523. Counting vote.

(1) All proceedings at the counting center shall be under the direction of the election commissioners or officials in charge of the election, and shall be conducted under the observations of the public, but no persons except those authorized for the purpose shall touch any ballot. All persons who are engaged in processing and counting of the ballots shall take the oath provided in Section 268, Mississippi Constitution of 1890.

(2) The election commissioners or the officials in charge of the election shall appoint qualified electors who have received the training required by subsection (11) of this section to serve as members of the "resolution board." An odd number of not less than three (3) members shall be appointed to the resolution board. The members of the board shall take the oath provided in Section 268, Mississippi Constitution of 1890. All ballots that have been rejected by the OMR equipment and that are damaged or defective, blank or overvoted will be reviewed by the board. Election commissioners, candidates who are on the ballot and the spouse, parents, siblings or children of such a candidate shall not be appointed to the resolution board. In general and special elections, members of the party executive committees shall not be appointed to the resolution board unless members of all of the party executive committees who have a candidate on the ballot are appointed to the resolution board.

(3)(a) If any ballot is damaged or defective so that it cannot be properly counted by the OMR equipment, the ballot will be deposited in an envelope provided for that purpose marked "RESOLUTION BOARD." All such ballots shall be carefully handled so as to avoid altering, removing or adding any mark on the ballot.

(b) The election commissioners or the officials in charge of the election shall have the members of the resolution board ascertain the intent of the voter, if possible, and, if so, manually count any damaged or defective ballots.

(c) The resolution board shall prepare a duplicate to the damaged or defective ballot in the following manner:

(i) The resolution board shall prepare a duplicate to the original damaged or defective ballot marked identically to the original.

(ii) The resolution board shall mark the first original they examine as "Original #1" and the duplicate of this original as "Duplicate #1." Later originals and duplicates shall be likewise marked and numbered consecutively so the duplicate of each original can be identified. Duplicate ballots shall be stamped in a different manner from the original ballots so that they may be easily distinguished from the originals.

(iii) The duplicate ballots prepared pursuant to this paragraph shall be counted by the OMR equipment.

(4) The resolution board shall examine ballots that have been rejected by the OMR equipment for appearing to be "blank" to verify if they are blank or were marked with a "nondetectable" marking device. If it is determined that the ballot was marked with a nondetectable device, the resolution board shall prepare a duplicate to the original blank ballot in the same manner and in accordance with the same process provided in subsection (3)(c).

(5) All ballots that are rejected by the OMR equipment and that contain overvotes shall be inspected by the resolution board. Regarding those rejected ballots upon which an overvote appears, if the voter intent cannot be determined by the resolution board, the officials in charge of the election may use the OMR equipment in determining the vote in the races that are unaffected by the overvote. All other ballots that are overvoted shall be counted manually following the provisions of this section at the direction of the officials in charge of the election. The return printed by the OMR equipment to which have been added the manually tallied ballots, which shall be duly certified by the officials in charge of the election, shall constitute the official return of each voting precinct. Unofficial and incomplete returns may be released during the count. Upon the completion of the counting, the official returns shall be open to the public.

(6) When the resolution board reviews any OMR ballot in which the voter has failed to fill in the arrow, oval, circle or square for a candidate or a ballot measure, the resolution board shall, if the intent of the voter can be ascertained, count the vote if:

(a) The voter marks the ballot with a "cross" (X) or "checkmark" (√) and the lines that form the mark intersect within or on the line of the arrow, oval, circle or square by the ballot measure or the name of the candidate.

(b) The voter blackens the arrow, oval, circle or square adjacent to the ballot measure or the name of the candidate in pencil or ink and the blackened portion extends beyond the boundaries of the arrow, oval, circle or square.

(c) The voter marks the ballot with a "cross" (X) or "checkmark" (√) and the lines that form the mark intersect adjacent to the ballot measure or the name of the candidate.

(d) The voter underlines the ballot measure or the name of a candidate.

(e) The voter draws a line from the arrow, oval, circle or square to a ballot measure or the name of a candidate.

(f) The voter draws a circle or oval around the ballot measure or the name of the candidate.

(g) The voter draws a circle or oval around the arrow, oval, circle or square adjacent to the ballot measure or the name of the candidate.

(7) The resolution board, when inspecting an OMR ballot that contains or appears to contain one or more overvotes, appears to be damaged or defective, or is rejected by the OMR equipment for any reason or cannot be counted by the OMR equipment, shall make its determination in accordance with the following:

(a) When an elector casts more votes for any office or measure than he or she is entitled to cast at an election, all the elector's votes for that office or measure are invalid and the elector is deemed to have voted for none of them. If an elector casts less votes for any office or measure than he or she is entitled to cast at an election, all votes cast by the elector shall be counted but no vote shall be counted more than once.

(b) If an elector casts more than one (1) vote for the same candidate for the same office, the first vote is valid and the remaining votes for that candidate are invalid.

(c) No write-in vote for a candidate whose name is printed on the ballot shall be regarded as invalid due to misspelling a candidate's name, or by abbreviation, addition or omission or use of a wrong initial in the name, as long as the intent of the voter can be ascertained.

(d) In any case where a voter writes in the name of a candidate for President of the United States whose name is printed on the general election ballot, the failure by the voter to write in the name of a candidate for the Office of Vice President of the United States on the general election ballot does not invalidate the elector's vote for the slate of electors for any candidate whose name is written in for the Office of President of the United States.

(e) For any ballot measure in which the words "for" or "against" are printed on a ballot, if the voter shall write the word "for" or the word "against" instead of or in addition to marking the ballot in accordance with the ballot instruction in the space adjacent to the preprinted words "for" or "against," the resolution board shall, in reviewing such ballot, count the vote in accordance with the voter's handwritten preference, unless the voter marks the ballot in the space adjacent to the preprinted words "for" or "against" contrary to the handwritten preference, in which case no vote shall be recorded for such ballot in regard to the ballot measure.

(f) For any ballot measure in which the words "yes" or "no" are printed on a ballot, if the voter shall write the word "yes" or the word "no" instead of or in addition to marking the ballot in accordance with the ballot instructions in the space adjacent to the preprinted words "yes" or "no," the resolution board shall, in reviewing such ballot, count the vote in accordance with the voter's handwritten preference, unless the voter marks the ballot in the space adjacent to the preprinted words "yes" or "no" contrary to the handwritten preference, in which case no vote shall be recorded for such ballot in regard to the ballot measure.

(8) OMR equipment shall be programmed, calibrated, adjusted and set up to reject ballots that appear to be damaged or defective. Any switch, lever or feature on OMR equipment that enables or permits the OMR equipment to override the rejection of damaged or defective ballots so that such ballots will not be reviewed by the resolution board, shall not be used.

(9) Ballots shall be manually counted by the resolution board only when the ballots are:

(a) Properly before the resolution board due to being rejected by the

OMR equipment because the ballots appear to be damaged or defective or are rejected by the OMR equipment for any other reason; or

(b) Properly before the resolution board due to a malfunction in the OMR equipment.

(10) The resolution board shall make and keep a record regarding the handling and counting of all ballots inspected under this section.

(11) The executive committee of each county or municipality, in the case of a primary election, or the election commissioners of each county or municipality, in the case of all other elections, in conjunction with the circuit or municipal clerk respectively, shall sponsor and conduct, a training session for up to two (2) hours, not less than five (5) days before each election, to instruct those qualified electors who are appointed to serve as members of the resolution board as to their specific duties in the election. No member appointed to serve on the resolution board shall serve in any election unless he or she has received such instruction once during the twelve (12) months immediately preceding the date upon which the election is held. Online training courses developed by the Secretary of State, though not sponsored or conducted by the executive committee or the election commissioners, may be used to meet the requirements of this subsection (11).

**HISTORY:**

Derived from 1972 Code § 23-7-523 [Laws, 1984, ch. 509, § 12; repealed by Laws, 1986, ch. 495, § 340]; en, Laws, 1986, ch. 495, § 168; Laws, 2002, ch. 529, § 1; Laws, 2008, ch. 528, § 7; Laws, 2009, ch. 490, § 1; Laws, 2017, ch. 441, § 96, eff from and after July 1, 2017.

**Joint Legislative Committee Note —**

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in the fourth paragraph. The words "nondetectible" and "detectible" were changed to "nondetectable" and "detectable", respectively. The Joint Committee ratified the corrections at its May 20, 1998 meeting.

**Editor's Notes —**

The United States Attorney General, by letter dated July 22, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws 2002, ch. 529.

On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

By letter dated July 21, 2009, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2009, ch. 490, § 1.

**Amendment Notes —**

The 2017 amendment substituted "election commissioners" for "commissioners of election," "OMR equipment" for "OMR tabulating equipment," and "members of the resolution board" for "judges on the resolution board" throughout; rewrote the second sentence of (1), which read: "All persons who are engaged in processing and counting of the ballots shall be deputized in writing and take oath that they will faithfully perform their assigned duties"; in (2), rewrote the fifth sentence, which read: "Commissioners of election, candidates who are on the ballot at the election and the parents, siblings or children of such a candidate shall not be appointed to the resolution board," and substituted "In general and special elections" for "if the election is not a primary election" in the last sentence; in (3), inserted "ascertain the intent of the voter, if possible, and, if so," and deleted "who shall determine the intent of the voter and record the vote consistent with this determination" from the end of (b), and rewrote (c), which read: "As an alternative to the procedure provided for in paragraph (b) of this subsection, the resolution board may be instructed by the officials in charge of the election to prepare a duplicate to the damaged or defective ballot in the following manner"; in (4), added "The resolution board shall examine" at the beginning, and rewrote the last sentence, which read: "If it is determined that the ballot was marked with a nondetectable device, the resolution board may mark over the voter's mark with a detectable marking device"; in (5), inserted "rejected";

and substituted "and voter intent" for "if the voter intent" in the second sentence and deleted the former third sentence, which read: "If for any reason it becomes impracticable to count all or a part of the ballots with the OMR tabulating equipment, the officials in charge may direct that they be counted manually, and voter intent shall be determined by following the provisions of this section"; deleted "in accordance with the ballot instruction" following "or a ballot measure" in (6); in (7), deleted "except as provided in paragraph (b) of this subsection" from the end of the first sentence of (a), inserted "for that candidate" in (b), and substituted "invalid" for "defective" in (c); in (8), substituted "ballots" for "ballot cards" three times, and substituted "used" for "utilized" at the end; rewrote (11), which read: "Qualified electors who are appointed to serve as members of the resolution board shall be required to have the training required for election managers pursuant to Section 23-15-239"; and made gender neutral and minor stylistic changes.

## JUDICIAL DECISIONS

**1. In general.**

Determination of intent of voters of certain contested ballots is by its very nature fact inquiry to be made by Special Tribunal and Supreme Court's duty is to respect Special Tribunal's findings where it was not manifestly wrong. Wade v. Williams, 517 So. 2d 573, 1987 Miss. LEXIS 2971 (Miss. 1987).

## OPINIONS OF THE ATTORNEY GENERAL

Since ballots will be counted in presence of officials of both parties and general public, there is no apparent prohibition against representative of one party using key to particular voting machine to initiate counting process which would include counting of ballots for another party. 1992 Miss. Op. Att'y Gen. 572.

## RESEARCH REFERENCES

**Law Reviews.**

Mississippi Election Code of 1986, 56 Miss. L. J. 535, December 1986.

## § 23-15-525. Authority of Secretary of State and election commissioners for the safe and efficient use of OMR equipment; resolution board for rejected ballots.

(1) The Secretary of State shall have the power to issue supplementary instructions and procedures for the safe and efficient use of OMR equipment within the State of Mississippi and to carry out the purpose of the chapter. Subject to such instructions and procedures provided by the Secretary of State and the provisions of this chapter, the election commissioners shall have the power to make additional provisions for the conduct of elections with the OMR equipment.

(2) If for any reason the OMR equipment shall become inoperable, the poll managers shall direct voters to operating OMR equipment or to cast emergency paper ballots. The paper ballots shall be administered in accordance with the laws concerning paper ballots.

**HISTORY:**

Derived from 1972 Code § 23-7-525 [Laws, 1984, ch. 509, § 13; repealed by Laws, 1986, ch. 495, § 340]; en, Laws, 1986, ch. 495, § 169; Laws, 2017, ch. 441, § 97, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment, in (1), substituted "OMR equipment" for "OMR tabulating equipment" inserted "provided by the Secretary of State" and substituted "election commissioners" for "commissioner of elections," "make additional provisions" for "make all necessary and desirable provisions" and "the OMR equipment" for "approved electronic voting systems"; and added (2).

## SUBARTICLE E.

## DIRECT RECORDING ELECTRONIC VOTING EQUIPMENT (DRE).

Sec.

23-15-531. Direct recording electronic voting equipment (DRE unit) defined.
23-15-531.1. Minimum requirements DRE systems must meet to be used in elections.
23-15-531.2. Manner in which DRE units must be arranged at polling places.
23-15-531.3. Form of ballot; requirements where color display is used.
23-15-531.4. Circuit clerk to be custodian of county DRE units; municipal clerk to be custodian of municipal DRE units.
23-15-531.5. Arrangement of offices, names of candidates and ballot questions on DRE ballots; creation of database for DRE units.
23-15-531.6. Minimum number of machines to be used; officials to ensure delivery of proper DRE units to polling places at least one hour before polls open; each unit to be tested, inspected and sealed prior to delivery to polling place; memory cards and encoders to be tested; protection against molestation of or injury to DRE units; preparation of DRE units for voting.
23-15-531.7. Repealed.
23-15-531.8. Repealed.
23-15-531.9. Manner in which elector to vote on DRE unit; voiding of ballots in certain instances when elector does not complete voting process.
23-15-531.10. Counting votes and determining results in elections conducted with DREs.
23-15-531.11. Repealed.
23-15-531.12. Emergency paper ballots to be cast if DRE unit becomes inoperable.
23-15-531.13. Repealed.

### § 23-15-531. Direct recording electronic voting equipment (DRE unit) defined.

"Direct recording electronic voting equipment (DRE unit)" means a computer driven unit for casting and counting votes on which an elector touches a video screen or a button adjacent to a video screen to cast his or her vote.

**HISTORY:**

Laws, 2005, ch. 534, § 1; Laws, 2017, ch. 441, § 98, eff from and after July 1, 2017.

**Editor's Notes —**

On June 6, 2005, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the enactment of this subarticle by Laws of 2005, ch. 534, §§ 1 through 14.

**Amendment Notes —**

The 2017 amendment deleted the introductory paragraph and (a), which read: "As used in this subarticle: (a) 'DRE' means direct recording electronic voting equipment"; and inserted "(DRE unit)."

### § 23-15-531.1. Minimum requirements DRE systems must meet to be used in elections.

(1) The board of supervisors of each county and the governing authorities of each municipality are hereby authorized and empowered, in their discretion, to purchase or rent DRE units that meets the requirements of subsection (2) of this section and may use such system in all or a part of the precincts within its

boundaries. The provisions of this chapter shall be controlling with respect to elections in which a DRE unit is used, and shall be liberally construed so as to carry out the purpose of this chapter. The provisions of the election law relating to the conduct of elections with paper ballots, insofar as they are applicable, shall apply.

(2) No DRE unit shall be acquired or used in accordance with this chapter unless it shall:

(a) Permit the voter to verify, in a private and independent manner, the votes selected by the voter on the ballot before the ballot is cast and counted;

(b) Provide the voter with the opportunity, in a private and independent manner, to change the ballot or correct any error before the ballot is cast and counted, including, but not limited to, the opportunity to correct the error through the issuance of a replacement ballot if the voter is otherwise unable to change the ballot or correct any error;

(c) If the voter votes for more candidates for a single office than are eligible for election:

(i) Notify the voter that he or she has selected more candidates for that office than are eligible for election;

(ii) Notify the voter before his or her vote is cast and counted of the effect of casting multiple votes for such an office; and

(iii) Provide the voter with the opportunity to correct the ballot before the ballot is cast and counted;

(d) Produce a permanent paper record with a manual audit capability;

(e) Have the capability to print the ballots cast by electors;

(f) Be accessible for individuals with disabilities, including, but not limited to, nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence, as for other voters. This requirement may be satisfied through the use of at least one (1) DRE unit or other voting unit equipped for individuals with disabilities at each polling place;

(g) Provide alternative language accessibility pursuant to the requirements of the Voting Rights Act of 1965; and

(h) Have a residual vote rate in counting ballots attributable to the voting system and not to voter error that complies with error rate standards established under the voting system standards issued by the Federal Election Commission in effect as of October 29, 2002.

**HISTORY:**

Laws, 2005, ch. 534, § 2, eff June 6, 2005 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section); Laws, 2017, ch. 441, § 99, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment deleted the introductory paragraph, which read: "Each DRE unit shall"; added (1) and the introductory paragraph of (2); in (2), deleted "selects" following "voter" in the introductory paragraph of (c), rewrote (d) and (e), which read: "(d) Produce a permanent paper record with a manual audit capacity which shall be available for any recount conducted with respect to the election in which the DRE unit is used; (e) Have the capability to print the ballots cast by electors to be utilized in the event of a recount conducted with respect to the election in which the DRE is used" and deleted "which were" following "Commission" in (h); and made gender neutral changes.

### § 23-15-531.2. Manner in which DRE units must be arranged at polling places.

DRE units shall be arranged in the polling place in such a manner as to:

(a) Ensure the privacy of the elector while voting on the units;

(b) Allow monitoring of the units by the poll managers while the polls are open; and

(c) Permit the public and lawful poll watchers to observe the voting without affecting the privacy of the electors as they vote.

**HISTORY:**

Laws, 2005, ch. 534, § 3; Laws, 2017, ch. 441, § 100, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment substituted "DRE units" for "DREs" and made a minor stylistic change.

### § 23-15-531.3. Form of ballot; requirements where color display is used.

(1) The ballots for DRE units shall be of such size and arrangement as will suit the construction of the DRE screen and shall be in plain, clear type that is easily readable by persons with normal vision.

(2)(a) If the DRE unit has the capacity for color display, the names of all candidates in a particular race shall be displayed in the same color, font and size, and the political party or affiliation of candidates may be displayed in a color different from that used to display the names of the candidates, but all political parties or affiliations shall be displayed in the same color. All political party names shall be displayed in the same size and font.

(b) All ballot questions, local options, referenda and constitutional amendments shall be displayed in the same color.

**HISTORY:**

Laws, 2005, ch. 534, § 4; Laws, 2017, ch. 441, § 101, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment substituted "DRE units" for "DREs" in (1); in (2), substituted "DRE unit" for "equipment" in (a), and inserted "local options, referenda" in (b); and made a minor stylistic change.

### § 23-15-531.4. Circuit clerk to be custodian of county DRE units; municipal clerk to be custodian of municipal DRE units.

(1) The circuit clerk shall be the custodian of the DRE units acquired by the county and shall be charged with the proper storage, maintenance and repair of the county's DRE units.

(2) The municipal clerk shall be the custodian of the DRE unit acquired by the municipality, and shall be charged with the proper storage, maintenance and repair of the DRE unit.

(3) The custodian shall provide compensation for the safe storage and care of the DRE units and related equipment if the same are stored and secured by a person or entity other than the circuit or municipal clerk.

**HISTORY:**

Laws, 2005, ch. 534, § 5; Laws, 2011, ch. 357, § 3; Laws, 2017, ch. 441, § 102, eff from and after July 1, 2017.

**Editor's Notes —**

By letter dated July 28, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2011, ch. 357.

**Amendment Notes —**

The 2017 amendment rewrote the section to delete references to the duties of officials in charge of the election in regard to the use, delivery and placement of DREs, and the testing of the units to ascertain the units correctly count votes.

### § 23-15-531.5. Arrangement of offices, names of candidates and ballot questions on DRE ballots; creation of database for DRE units.

(1) The arrangement of offices, names of candidates and ballot questions upon the DRE ballots shall conform as nearly as practicable to the arrangement of offices, names of candidates and ballot questions on paper ballots.

(2) The officials in charge of the election of each county or municipality shall cause the creation of the database for each DRE unit that is to be used in any precinct within the county or municipality.

**HISTORY:**

Laws, 2005, ch. 534, § 6; Laws, 2017, ch. 441, § 103, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment inserted "ballot" twice in (1); and rewrote (2), which read: "A separate write-in ballot, which may be in the form of a paper ballot, card or envelope in which the voter places his ballot card after voting, shall be provided if required to permit voters to write in the title of the office and the name of the person not on the printed ballot for whom he wishes to vote. The design of the write-in ballot shall permit the officials in charge of the election and poll workers when obtaining the vote count from such systems to determine readily whether an elector has cast any write-in vote not authorized by law."

### § 23-15-531.6. Minimum number of machines to be used; officials to ensure delivery of proper DRE units to polling places at least one hour before polls open; each unit to be tested, inspected and sealed prior to delivery to polling place; memory cards and encoders to be tested; protection against molestation of or injury to DRE units; preparation of DRE units for voting.

(1) For each primary or general election, the officials in charge of the election shall use at least seventy-five percent (75%) of all DRE units available to the county or municipality, as the case may be. For all other elections in which the officials in charge of the election choose to use DRE units, at least one-third (⅓) of all DRE units available to the county or municipality, as the case may be, shall be used in such elections.

(2) The officials in charge of the election shall ensure the delivery of the proper DRE units to the polling places of the respective precincts at least one

(1) hour before the time for opening the polls at each election and shall cause each unit to be set up in the proper manner for use in voting.

(3)(a) On or before the second day before any election, the officials in charge of the conduct of the election shall cause each DRE unit to be tested for logic and accuracy to ascertain that the units will correctly count the votes cast for all offices and on all questions, in a manner the Secretary of State may further prescribe by rule or regulation.

(b) Public notice of the time and place of the test shall be made at least five (5) days before the date of the test. Candidates, representatives of candidates, political parties, news media and the public shall be permitted to observe the testing of the DRE units.

(4) The officials in charge of the conduct of the election shall test all memory cards and encoders to be used in any election.

(5) The officials in charge of the election shall require that each DRE unit be inspected and sealed before the delivery of each DRE unit to the polling place. Before opening the polls each day on which the DRE units will be used in an election, the poll manager shall break the seal on each unit, turn on each unit, certify that each unit is operating properly and is set to zero, and print a zero tape certifying that each unit is set to zero and shall keep or record such certification on each unit.

(6) The officials in charge of the election, election commissioners and poll managers shall provide ample protection against molestation of and injury to the DRE units, and, for that purpose, the officials in charge of the election, election commissioners and poll managers may call upon any law enforcement officer to furnish any assistance that may be necessary. It shall be the duty of any law enforcement officer to furnish assistance when so requested by the officials in charge of the election, election commissioner or poll manager.

(7) The officials in charge of the election, in conjunction with the governing authorities, shall, at least one (1) hour before opening the polls:

(a) Provide sufficient lighting to enable electors to read the ballot and to enable poll managers to examine the booth and conduct their responsibilities;

(b) Provide directions for voting on the DRE units that shall be prominently posted within each voting booth and provide at least one (1) sample ballot for each primary or general election shall be prominently posted outside the enclosed space within the polling place;

(c) Ensure that each DRE unit and its tabulating mechanism is secure throughout the day; and

(d) Provide such other materials and supplies as may be necessary or required by law.

**HISTORY:**

Laws, 2005, ch. 534, § 7; Laws, 2011, ch. 357, § 4; Laws, 2017, ch. 441, § 104, eff from and after July 1, 2017.

**Editor's Notes —**

By letter dated July 28, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2011, ch. 357.

**Amendment Notes —**

The 2017 amendment added the last sentence of (1); added (3) and (4), and redesignated former (3) through (5) as (5) through (7); in (5), deleted "thoroughly tested" following "DRE unit be" in the first sentence, and inserted "poll" in the second sentence; in (6), inserted "election commissioners" twice and "election commissioner" once; rewrote (7)(a), which read: "Provide sufficient lighting to enable electors to read the ballot and which shall be suitable for the use of the poll managers in examining the booth and conducting their responsibilities"; substituted "and provide at least one (1) sample ballot for each primary" for "and at least two (2) sample ballots for the primary" in (7)(b); rewrote (7)(c), which read: "Ensure that each DRE unit's tabulating mechanism is secure throughout the day during the primary or general election; and"; and made minor stylistic changes throughout.

## § 23-15-531.7. Repealed.

Repealed by Laws of 2017, ch. 441, § 197, effective July 1, 2017.

§ 23-15-531.7. [Laws, 2005, ch. 534, § 8, eff June 6, 2005 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)]

**Editor's Notes —**

Former § 23-15-531.7 required public exhibition and demonstration of the use of the DRE units.

## § 23-15-531.8. Repealed.

Repealed by Laws of 2017, ch. 441, § 198, effective July 1, 2017.

§ 23-15-531.8. [Laws, 2005, ch. 534, § 9, eff June 6, 2005 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)]

**Editor's Notes —**

Former § 23-15-531.8 related to the storage and security of DRE units when not in use.

## § 23-15-531.9. Manner in which elector to vote on DRE unit; voiding of ballots in certain instances when elector does not complete voting process.

(1) A duly qualified elector shall cast his or her vote on a DRE unit by touching the screen or pressing the appropriate button on the DRE unit for the candidate or ballot measure of the elector's choice. After pressing the appropriate button on the DRE unit or location on the screen to cast the ballot, the elector's vote shall be final and shall not be subsequently altered.

(2) If an elector leaves the voting booth without having pressed the appropriate button on the DRE unit or location on the screen to finally cast his or her ballot and cannot be located to return to the booth to complete the voting process, then a poll manager shall take the steps necessary to void the ballot that was not completed by the elector and an appropriate record shall be made of the event, or the DRE unit shall be allowed to time-out, thereby voiding the ballot.

**HISTORY:**

Laws, 2005, ch. 534, § 10; Laws, 2017, ch. 441, § 105, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment, in (1), inserted "DRE" twice, substituted "ballot measure" for "issue," and made a gender neutral change; and in (2), inserted "DRE" near the beginning, and added "or the DRE unit . . . voiding the ballot" at the end.

### § 23-15-531.10. Counting votes and determining results in elections conducted with DREs.

(1) In elections in which DRE units are used, the ballots shall be counted at the precinct under the direction of the officials in charge of the election. All persons who perform any duties at the precinct shall take the oath provided in Section 268, Mississippi Constitution of 1890 and only those persons shall touch any ballot, container, paper or machine used in the conduct of the count or be permitted in the immediate area where the ballots are counted.

(2) All proceedings at the precincts shall be open to the view of the public, but no person except one employed and designated for the purpose by the officials in charge of the election shall touch any ballot, any DRE unit or the tabulating equipment.

(3) After the polls have closed and all voting in the precinct has ceased, the poll manager shall shut down the DRE units and extract the election results from each unit as follows:

(a) The poll manager shall obtain the results tape from each DRE unit and verify that the number of ballots cast as recorded on the tape matches the public count number as displayed on the DRE unit; and

(b) The poll manager shall extract the memory card, if applicable, from each DRE unit.

(4)(a) Upon completion of shutting down each DRE unit and extracting the election results, the poll manager shall cause to be completed and signed a ballot recap form, in sufficient counterparts, showing:

(i) The number of valid ballots;
(ii) The number of spoiled ballots;
(iii) The number of affidavit ballots;
(iv) The number of accepted and rejected absentee ballots;
(v) The number of challenged and rejected ballots; and
(vi) The number of unused paper ballots.

(b) The poll manager shall cause to be placed in the ballot box or supply container, should the supply container be capable of being sealed and secured, one (1) copy of the recap form, affidavit ballots, absentee ballots, spoiled ballots, challenged and rejected ballots and any unused paper ballots.

(5) The poll manager shall collect and retain the zero tape and the results tape for each DRE unit and place the tapes with the memory card, if any, for each unit and enclose all such items for all of the DRE units used in the precinct in the memory card transport bag which shall be sealed and initialed by the poll manager so that it cannot be opened without breaking the seal. The memory card transport bag shall be placed in the ballot box.

(6) The receiving and returning poll manager shall then deliver the sealed ballot box to the tabulating center for the county or municipality or to such other place designated by the officials in charge of the election and shall receive

a receipt therefor. The copies of the recap forms, unused ballots, records and other materials shall be returned to the designated location and retained as provided by law.

(7) Upon receipt of the sealed ballot box and memory card transport bag that contains the zero tapes, results tapes and memory cards, the officials in charge of the election shall break the seal of the memory card transport bag and remove its contents. The officials in charge of the election shall then download the results stored on the memory card from each DRE unit into the election management system located at the central tabulation point of the county in order to obtain election results for certification.

**HISTORY:**

Laws, 2005, ch. 534, § 11; Laws, 2017, ch. 441, § 106, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment inserted "poll" preceding "manager" throughout; in (1), substituted "DRE units are" for "DRE voting equipment is" in the first sentence, and rewrote the last sentence, which read: "All persons who perform any duties at the precinct shall be deputized by the officials in charge of the election and only persons so deputized shall touch any ballot, container, paper or machine utilized in the conduct of the count or be permitted to be in the immediate area designed for officers deputized to conduct the count"; in (3), deleted (b), which read: "If a system is established by the Secretary of State, the poll manager shall first transmit the election results extracted from each DRE unit in each precinct via modem to the central tabulating center of the county; and," redesignated former (b) as (c), and made a related change; in (4)(a), deleted "and invalid" following "spoiled" in (ii), added (iv) and (v), and rewrote former (iv), which read: "The number of unused affidavit ballots and any other unused ballots," and redesignated it (vi); rewrote (4)(b), which read: "The manager shall cause to be placed in the ballot supply container one (1) copy of the recap form and any unused, defective, spoiled and invalid ballots, each enclosed in an envelope or communication pack"; in (5), substituted "the memory card transport bag" for "one (1) envelope or communication pack" in the first sentence, and added the last sentence; substituted "receiving and returning poll manager shall then deliver the sealed ballot box to" for "returning manager shall then deliver the envelope or communication pack to" in (6); in (7), combined the former first two sentences, which read: "Upon receipt of the sealed envelope or communication pack containing the zero tapes, results tapes and memory cards, the officials in charge of the election shall verify the signatures on the envelope or communication pack. Once verified, the officials in charge of the election shall break the seal of the envelope or communication pack and remove its contents" into the present first sentence; and made minor stylistic changes throughout.

## § 23-15-531.11. Repealed.

Repealed by Laws of 2017, ch. 441, § 199, effective July 1, 2017.

§ 23-15-531.11. [Laws, 2005, ch. 534, § 12, eff June 6, 2005 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)]

**Editor's Notes —**

Former § 23-15-531.11 provided for the coding of challenged ballots on DRE units.

## § 23-15-531.12. Emergency paper ballots to be cast if DRE unit becomes inoperable.

If for any reason any DRE unit shall become inoperable, the poll managers, or the officials in charge of the election, shall direct voters to an operating

DRE unit or to cast emergency paper ballots. Such paper ballots shall be administered in accordance with the laws concerning paper ballots.

**HISTORY:**

Laws, 2005, ch. 534, § 13, eff June 6, 2005 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section); Laws, 2017, ch. 441, § 107, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment rewrote the section, which read: "If for any reason any direct recording electronic voting equipment shall become inoperable, the poll managers, or the officials in charge of the election, shall direct voters to go to an operating terminal or to cast irregular ballots, if necessary, which shall be paper ballots. Such paper ballots shall be administered, as far as is practicable, in accordance with the laws concerning paper ballots."

### § 23-15-531.13. Repealed.

Repealed by Laws of 2016, ch. 430, § 22, effective from and after January 1, 2017

§ 23-15-531.13. [Laws, 2005, ch. 534, § 14, eff June 6, 2005 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section.)]

**Editor's Notes —**

Former § 23-15-531.13 made it a felony to tamper with or damage a DRE unit or tabulating computer or attempt to prevent the correct operation of any DRE and provided penalties.

# ARTICLE 17.

# CONDUCT OF ELECTIONS.

Subarticle A. General Provisions. .......... 23-15-541
Subarticle B. Affidavit Ballots and Challenged Ballots. .......... 23-15-571
Subarticle C. Determining the Results of Elections. .......... 23-15-591

## SUBARTICLE A.

## GENERAL PROVISIONS.

Sec.
23-15-541. Hours polls to be open; designation and duties of initialing poll manager and alternate initialing poll manager; curbside voting authorized for certain individuals; procedure.
23-15-543. Receipt booklet to be kept in polling place, except during adjournment, until enclosed in ballot box.
23-15-545. Entries in pollbook.
23-15-547. Electronic capture of voters' signatures; paper version may be generated after polls close.
23-15-549. Assistance to voter.
23-15-551. Marking and casting ballot; who may be present in polling room.
23-15-553. Ballots not to be removed before close of polls; procedure regarding spoiled ballots when polls close.
23-15-555. Repealed.
23-15-557. Municipality's authority to establish precincts and polling places.
23-15-559. Repealed.
23-15-561. Penalties for unlawful lottery.

Sec.
23-15-563. Qualified elector required to provide identification before voting; kinds of identification; voting by affidavit ballot.

### § 23-15-541. Hours polls to be open; designation and duties of initialing poll manager and alternate initialing poll manager; curbside voting authorized for certain individuals; procedure.

(1) At all elections, the polls shall be opened promptly at 7:00 a.m. and be kept open until the last qualified voter, who was standing in line at the polling place at 7:00 p.m., has cast his or her ballot, or 7:00 p.m., whichever is later. One (1) hour before opening the polls, and not before, the poll managers shall designate two (2) of their number, other than the poll manager who was designated as the receiving and returning poll manager, who shall be known respectively as the initialing poll manager and the alternate initialing poll manager. The alternate initialing poll manager, in the absence of the initialing poll manager, shall perform all of the duties and undertake all of the responsibilities of the initialing poll manager. When any person entitled to vote shall appear to vote, the poll managers shall locate the name of the voter in the pollbook, identify the voter by requiring the voter to submit acceptable photo identification as required by Section 23-15-563, and then allow the voter to sign his or her name in a receipt book or booklet provided for that purpose and to be used at that election only. After the voter has signed the receipt book or booklet, the initialing poll manager or, in his or her absence, the alternate initialing poll manager shall endorse his or her initials on the back of an official blank ballot, prepared in accordance with law, and at such place on the back of the ballot that the initials may be seen after the ballot has been marked and folded, and when so endorsed he or she shall deliver it to the voter, which ballot the voter shall mark in the manner provided by law, which when done the voter shall deliver the ballot to the initialing poll manager or, in his or her absence, to the alternate initialing poll manager, in the presence of the others, and the poll manager shall see that the ballot so delivered bears on the back thereof the genuine initials of the initialing poll manager, or alternate initialing poll manager, and if so, but not otherwise, the ballot shall be put into the ballot box; and when so done one (1) of the poll managers shall mark the pollbook "VOTED" across from the name of the voter and in the appropriate column. If the voter is unable to write his or her name on the receipt book, a poll manager shall note on the back of the ballot that it was receipted for by the poll manager's assistance.

(2) A poll manager shall be authorized to allow a physically disabled person to vote curbside during the hours in which the polls are open as described in this section.

(a) Where the poll managers of an election, exercising their sound discretion, determine that a physically disabled person has arrived at the polls in a motor vehicle to vote, two (2) poll managers shall carry the pollbook, the receipt book, and a ballot or voting device to the motor vehicle.

After determining the disabled person is a qualified elector as provided by law by locating the disabled elector's name in the pollbook, the poll managers shall identify the disabled elector by requiring the elector to submit acceptable photo identification as required by Section 23-15-563 and then allow the elector to sign his or her name in the receipt book and cast his or her ballot in secret. To ensure the secrecy of the vote of the disabled elector, other passengers in the motor vehicle, except the disabled elector and any other disabled persons in the motor vehicle, shall exit the motor vehicle until the disabled elector has completed the casting of his or her ballot. After the disabled elector casts his or her ballot, the poll managers shall mark "VOTED" by the elector's name and in the appropriate column in the pollbook.

(b) If the ballot that is provided to the disabled elector is a paper ballot, the initialing poll manager shall initial the ballot as provided by law, and the disabled elector, after marking his or her ballot shall fold the ballot or place it in the ballot sleeve. The initialing poll manager or alternate initialing poll manager shall determine whether the initials on the ballot are genuine, and upon a determination that the initials are genuine, mark "VOTED" by the elector's name and in the appropriate column in the pollbook. The initialing poll manager or alternate initialing poll manager shall without delay place the ballot in the ballot box.

(c) If, while a voter is voting by curbside, there are less than three (3) poll managers immediately present within the polling place conducting an election, all voting at the polls shall stop until the poll managers conducting the curbside voting return to the polls so that there are at least three (3) poll managers immediately present within the polling place to conduct the election, and until a minimum of three (3) poll managers are present, the remaining poll manager or poll managers shall ensure the security of the ballot box, the voting devices, and any ballots and election materials.

(3) Nothing in this section shall prevent a voter from requesting voter assistance as provided in Section 23-15-549.

**HISTORY:**

Derived from 1972 Code § 23-3-13 [(Codes, 1942, § 3164; Laws, 1935, ch. 19; Laws, 1960, ch. 448; 1857, ch. 4, art 12; 1871, §§ 370, 371; 1880, § 136; 1892, § 3648; 1906, § 4155; Hemingway's 1917, § 6789; 1930, § 6238; 1942, § 3267; Laws, 1916, ch. 230; Laws, 1960, ch. 451; Laws, 1964, ch. 511, § 1) repealed by Laws, 1986, ch. 495, §§ 333, 335]; en, Laws, 1986, ch. 495, § 170; Laws, 1993, ch. 528, § 4; Laws, 2008, ch. 528, § 8; Laws, 2012, ch. 526, § 5; Laws, 2017, ch. 441, § 108, eff from and after passage (approved Apr. 18, 2017).

**Editor's Notes —**

The United States Attorney General, by letter dated August 16, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to certain changes occasioned by Laws, 1993, ch. 528. However, with respect to a requirement for verification of a voter's identity at the polling place as a prerequisite to voting, the Attorney General concluded that the information submitted was insufficient to support a determination that the proposed change did not have the purpose and would not have the effect of denying or abridging the right to vote on account of race or color, as required by Section 5, and requested additional information.

Section 23-15-541 was amended by Laws of 1993, ch. 528, but that law has not been effectuated under Section 5 of the Voting Rights Act of 1965 as of September 1, 2004. Consequently, the version of Section 23-15-541 contained in Laws, 1993, ch. 528, is being omitted from the Code at the direction of Co-Counsel of The Joint Legislative Committee on Compilation, Revision and Publication of Legislation.

On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

The effective date of the bill that amended this section, Chapter 526, Laws of 2012 (House Bill No. 921), is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bill was submitted to the United States Attorney General under Section 5, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. Chapter 526 was submitted to the United States Attorney General before the *Shelby County* decision was rendered. In a letter dated August 5, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 526 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 526, so Chapter 526 became effective on the date of the response letter from the United States Attorney General, August 5, 2013.

Laws of 2017, ch. 441, § 205 provides:

"SECTION 205. This act shall take effect and be in force from and after July 1, 2017, except for Sections 3, 9, 13, 14, 15, 18, 19, 21, 24, 31, 70, 108, 115, 116, 117, 118, 119, 184 and 188, which shall take effect and be in force from and after passage [approved April 18, 2017]."

**Amendment Notes —**

The 2017 amendment, effective April 18, 2017, inserted "poll" preceding "manager" or "managers" throughout; in (1), rewrote the first two sentences, which read: "At all elections, the polls shall be opened at seven o'clock in the morning and be kept open until seven o'clock in the evening and no longer. Upon the opening of the polls, and not before, the managers of the election shall designate two (2) of their number, other than the manager theretofore designated to receive the blank ballots, who shall thereupon be known respectively as the initialing manager and the alternate initialing manager," rewrote the fourth sentence, which read: "When any person entitled to vote shall appear to vote, the managers shall identify the voter by requiring the voter to submit identification as required by Section 23-15-563, and then the voter shall sign his name in a receipt book or booklet provided for that purpose and to be used at that election only and said receipt book or booklet shall be used in lieu of the list of voters who have voted formerly made by the managers or clerks; whereupon and not before, the initialing manager or, in his absence, the alternate initialing manager shall endorse his initials on the back of an official blank ballot, prepared in accordance with law, and at such place on the back of the ballot that the initials may be seen after the ballot has been marked and folded, and when so endorsed he shall deliver it to the voter, which ballot the voter shall mark in the manner provided by law, which when done the voter shall deliver the ballot to the initialing manager or, in his absence, to the alternate initialing manager, in the presence of the others, and the manager shall see that the ballot so delivered bears on the back thereof the genuine initials of the initialing manager, or alternate initialing manager, and if so, but not otherwise, the ballot shall be put into the ballot box; and when so done one (1) of the managers or a duly appointed clerk shall make the proper entry on the pollbook" and divided it into the present fourth and fifth sentences, and rewrote the last sentence, which read: "If the voter is unable to write his name on the receipt book, a manager or clerk shall note on the back of the ballot that it was receipted for by his assistance"; in (2), deleted the (a) designation from the first paragraph, rewrote the second paragraph, which read: "Where the managers of an election, exercising their sound discretion, determine that a physically disabled person has arrived at the polls in a motor vehicle to vote, two (2) or more managers shall carry the pollbook, the receipt book, and a ballot or voting device to the motor vehicle, and after determining whether the disabled person is a qualified elector as provided by law, shall allow the disabled elector to cast his or her ballot in secret. After the disabled elector casts his or her ballot, the managers shall mark the pollbook 'voted' by the elector's name in the pollbook," and designated it (a), in (b), added "and in the appropriate column in the pollbook" at the end of the next-to-last sentence, and in (c), deleted "or a political party primary" following "conducting and election," substituted "voting return to the polls so that" for "voting procedure return so that," and deleted "or party primary at all times" preceding "and until a minimum"; added (3); and made gender neutral and minor stylistic changes.

**Cross References —**

Provision that the receipt booklet shall not be taken out of the polling place at any time until finally inclosed in the ballot box, see § 23-15-543.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2.-5. [Reserved for future use.]
6. Under former Section 23-3-13.

**1. In general.**

The initialling requirement found in § 23-15-541 does not apply to affidavit ballots. Wilbourn v. Hobson, 608 So. 2d 1187, 1992 Miss. LEXIS 445 (Miss. 1992).

**2.-5. [Reserved for future use.]**

**6. Under former Section 23-3-13.**

Where both the proponent and contestant of a primary election stipulated that three ballot boxes be disqualified, on the basis that the receiving manager and initialing manager of the ballots were one and the same person in violation of § 23-3-13, a fourth ballot box was properly discarded on the same basis, under both statutory and decisional law; however, in the absence of any allegations of fraud, under § 23-3-13, the disqualifications did not require a special election, where the disqualified votes amounted to 10.04 percent of all votes cast in the race, where, with or without the illegal votes, the same candidate was the winner, and where the parties had stipulated that the first three boxes would be "thrown out". Noxubee County Democratic Executive Committee v. Russell, 443 So. 2d 1191, 1983 Miss. LEXIS 3064 (Miss. 1983).

Ballots in boxes where the same person was the initialing manager and the receiving manager at the polling place are invalid. Prescott v. Ellis, 269 So. 2d 635, 1971 Miss. LEXIS 1145, 1972 Miss. LEXIS 1228 (Miss. 1971).

**Cited in:** Jefferson Davis County v. Davies, 912 So. 2d 837, 2005 Miss. LEXIS 212 (Miss. 2005).

## OPINIONS OF THE ATTORNEY GENERAL

Assuming that voters who cast uninitialed paper ballots were entitled to vote in the election and did, in fact, follow the law in casting those ballots and but for a failure on the part of the poll workers the legality of those ballots would not be in question, the ballots must be counted. 2003 Miss. Op. Att'y Gen. 626.

## RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 304, 316-318.

**CJS.**

29 C.J.S., Elections §§ 535, 541, 542, 547–549.

**Law Reviews.**

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

## § 23-15-543. Receipt booklet to be kept in polling place, except during adjournment, until enclosed in ballot box.

The receipt booklet, mentioned in Section 23-15-541, shall not be taken out of the polling place at any time until finally enclosed in the ballot box, except in case of any adjournment, when the receipt book shall be sealed in the ballot box.

**HISTORY:**

Derived from 1972 Code § 23-3-15 [Codes, 1942, § 3165; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, § 333]; en, Laws, 1986, ch. 495, § 171; Laws, 2017, ch. 441, § 109, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment substituted "enclosed" for "inclosed" and "book shall be sealed" for "booklet shall be locked."

RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 316-318.

**CJS.**

29 C.J.S., Elections §§ 541–548.

### § 23-15-545. Entries in pollbook.

At each election, at least one (1) poll manager shall be charged with writing in the pollbook the word "VOTED," in the column having at its head the date of the election, opposite the name of each elector upon return of a marked paper ballot by the elector with the initials of the initialing poll manager or alternate initialing poll manager affixed thereon. When a DRE unit is used in the polling place, the word "VOTED" shall be marked by at least one (1) poll manager in the pollbook in the column having at its head the date of the election, opposite the name of the elector.

**HISTORY:**

Derived from 1972 Code § 23-5-149 [Codes, 1892, § 3609; 1906, § 4115; Hemingway's 1917, § 6749; 1930, § 6239; 1942, § 3268; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 172; Laws, 2017, ch. 441, § 178, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment rewrote the section, which read: "At each election, the managers shall cause one (1) of the clerks to write in the pollbook the word 'VOTED,' in the column having at its head the date of the election, opposite the name of each elector as he votes."

RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 316-318.

**CJS.**

29 C.J.S., Elections § 528.

### § 23-15-547. Electronic capture of voters' signatures; paper version may be generated after polls close.

Instead of placing the signatures of voters in a paper receipt book, the signatures of voters may be electronically captured in the polling place and a paper version of the signatures of voters may be generated after the close of the polling place, which shall be sealed in the ballot box.

**HISTORY:**

Derived from 1972 Code § 23-5-153 [Codes, 1892, § 3649; 1906, § 4156; Hemingway's 1917, § 6790; 1930, § 6241; 1942, § 3270; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 173; Laws, 2017, ch. 441, § 110, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment rewrote the section, which read: "If the voter marks more names than there are persons to be elected to an office, or if for any reason it be impossible to determine from the ballot the voter's choice for any office voted for, his ballot so cast shall not be counted for that office. A ballot not provided in accordance with law shall not be deposited or counted."

### OPINIONS OF THE ATTORNEY GENERAL

If a voter voted in one or more of the Monroe County Democratic Primary elections but did not vote in the Monroe Justice Court Judge District 3 County Primary Election, then their ballot should not be counted for purposes of determining the total number of qualified electors who voted in the Monroe Justice Court Judge District 3 County Primary Election. Likewise, if a voter's ballot is not counted for the office of Monroe Justice Court Judge District 3 in the County Primary Election because it violates this section, then that ballot shall not be counted for purposes of determining the total number of qualified electors who voted in the Monroe Justice Court Judge District 3 County Primary Election. 2003 Miss. Op. Att'y Gen. 428.

### RESEARCH REFERENCES

**Am. Jur.**
26 Am. Jur. 2d, Elections §§ 342-345, 347-349, 359.
9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 102 (election contests).

**CJS.**
29 C.J.S., Elections §§ 573, 575.

## § 23-15-549. Assistance to voter.

Any voter who declares to the poll managers of the election that he or she requires assistance to vote by reason of blindness, disability or inability to read or write may be given assistance by a person of the voter's choice, except that voter assistance shall not be provided by a candidate whose name is on the ballot, or by a spouse, parent, sibling or child of a candidate whose name is on the ballot, or by a poll watcher who is observing the polling place on election day, or the voter's employer, or agent of that employer, or officer or agent of the voter's union; however, a candidate for public office or the spouse, parent or child of a candidate may provide assistance upon request of any voter who is related within the first degree.

**HISTORY:**
Derived from 1972 Code § 23-5-157 [Codes, 1892, § 3666; 1906, § 4173; Hemingway's 1917, § 6807; 1930, § 6243; 1942, § 3272; Laws, 1928, ch. 196; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 174; Laws, 2017, ch. 441, § 179, eff from and after July 1, 2017.

**Amendment Notes —**
The 2017 amendment rewrote the section, which read: "Any voter who declares to the managers of the election that he requires assistance to vote by reason of blindness, disability or inability to read or write may be given assistance by a person of the voter's choice other than the voter's employer, or agent of that employer, or officer or agent of the voter's union."

### JUDICIAL DECISIONS

#### ANALYSIS

I. Under Current Law.

1.-3. [Reserved for future use.]
4. Improper assistance and voter dilution.
5. Relation to other laws.

II. Under Former Law.

6. Under former Section 23-5-157.

#### I. Under Current Law.

**1.-3. [Reserved for future use.]**

**4. Improper assistance and voter dilution.**
Government properly established, for purposes of Fed. R. Civ. P. 52, that a political party executive committee and its chairman violated § 2 of the Voting Rights Act, 42 U.S.C.S. § 1973 [now 52 USCS § 10301], by intention-

ally diluting the voting power of white members of the party by obtaining large numbers of defective absentee ballots from black voters, facilitating improper counting of absentee ballots, and permitting improper assistance of black voters, contrary to the requirements of Miss. Code Ann. §§ 23-15-263, 23-15-715, and 23-15-549. United States v. Brown, 561 F.3d 420, 2009 U.S. App. LEXIS 4030 (5th Cir. Miss. 2009).

**5. Relation to other laws.**

Black chairman of a county political party executive committee was guilty of racial discrimination under § 2 of the Voting Rights Act because, inter alia, he instructed black poll workers and other unidentified black individuals to render unsolicited and otherwise improper "assistance" to black voters at a number of polling places in violation of Miss. Code Ann. § 23-15-549 for the purpose of diluting the white vote. United States v. Brown, 494 F. Supp. 2d 440, 2007 U.S. Dist. LEXIS 47255 (S.D. Miss. 2007), aff'd, 561 F.3d 420, 2009 U.S. App. LEXIS 4030 (5th Cir. Miss. 2009).

### II. Under Former Law.

**6. Under former Section 23-5-157.**

Votes cast by voters who were permitted by election managers to request assistance from poll watchers were improper where all persons who desired assistance in voting were permitted to have assistance without declaring that they were blind, physically disabled, or unable to read; the attempted repeal of Code 1942 § 3273, governing aid to illiterate voters, was ineffective where the proposed repeal was neither approved by the Attorney General of the United States nor approved in a declaratory judgment suit as otherwise required by the Voting Rights Act, 42 USCS § 1973c [now 52 USCS § 10304]; Code 1942 § 3273, allowing illiterates to have the assistance only of election managers in marking their ballots and requiring that the ballots be noted "marked with assistance", violates the equal protection clause of the U S Const. Fourteenth Amendment, since such provisions do not apply to blind and disabled voters under code 1972 § 23-5-157; under Code 1942 § 3273 and Code 1972 § 23-5-157, any voter who requests assistance in marking his ballot must first request assistance from the managers of the election who in turn must be satisfied that the voter is either blind, physically disabled, or illiterate, and no other persons may receive assistance in marking their ballots; Code 1942 § 3273 and the Voting Rights Act, 42 USCS § 1973l(c)(1) [now 52 USCS § 10310], are in harmony and exhibit a common purpose of providing assistance to illiterates in marking their ballots. O'Neal v. Simpson, 350 So. 2d 998, 1977 Miss. LEXIS 2243 (Miss. 1977), cert. denied, 435 U.S. 934, 98 S. Ct. 1510, 55 L. Ed. 2d 532, 1978 U.S. LEXIS 1231 (U.S. 1978).

It is the duty and responsibility of the precinct officials at each election to provide to each illiterate voter who may request it such reasonable assistance as may be necessary to permit such voter to cast his ballot in accordance with the voter's own decision. United States v. Mississippi, 256 F. Supp. 344, 1966 U.S. Dist. LEXIS 9894 (S.D. Miss. 1966).

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 313-315 (Assistance to voters).

**CJS.**

29 C.J.S., Elections §§ 548, 549.

**Law Reviews.**

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

## § 23-15-551. Marking and casting ballot; who may be present in polling room.

On receiving his or her ballot, the voter shall go without undue delay into one (1) of the voting compartments and shall there prepare his or her ballot by marking with ink or indelible pencil on the appropriate margin or place a cross (X) opposite the name of the candidate of his or her choice for each office or by writing in the name of a candidate in the blank space provided, and marking a cross (X) opposite thereto, and likewise a cross (X) opposite the answer he or she desires to give in case of an election on a constitutional amendment, local option election, referenda or any other question or matter. As an alternative method, a voter may, at his or her option, prepare a ballot by marking with ink or indelible pencil in the appropriate margin or place a check, in the form of and similar to a "V", opposite the name of the candidate of his or her choice for each office or by writing in the name of a candidate in the blank space provided and marking a check in the form of and similar to a "V", opposite thereto, and likewise a check, in the form of and similar to a "V", opposite the answer he or she desires to give in case of an election on a constitutional amendment, local option election, referenda or other question or matter, either of which methods of marking, whether by a cross (X) or by a check in the form of and similar to a "V", is authorized. Before leaving the voting compartment, the voter shall fold his or her ballot without displaying its markings, but so that the words "OFFICIAL BALLOT," followed by the designation of the voting precinct and the date of the election, shall be visible to the poll managers, then deposit his or her ballot directly into the ballot box. This shall be done without undue delay, and as soon as the voter has voted he or she shall promptly exit the polling place. A voter shall not be allowed to occupy a voting compartment already occupied by another voter, nor any compartment longer than ten (10) minutes, if other voters are not waiting, nor longer than five (5) minutes if other voters are waiting. A person shall not be allowed in the room in which the ballot boxes, compartments, tables and shelves are, except the officers of the election, and those appointed by them to assist therein, and those authorized by Section 23-15-577.

**HISTORY:**

Derived from 1972 Code § 23-5-151 [Codes, 1892, § 3664; 1906, § 4171; Hemingway's 1917, § 6805; 1930, § 6240; 1942, § 3269; Laws, 1948, ch. 306; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 175; Laws, 2017, ch. 441, § 111, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment, in the first and second sentences, inserted "local option election, referenda" and substituted "office or by writing in the name of a candidate in the blank space provided, and marking" for "office to be filled, or by filling in the name of the candidate substituted in the blank space provided therefor, and marking"; in the first sentence, substituted "shall go without undue delay into one (1) of the" for "shall forthwith go into one of the"; rewrote the former third and fourth sentences, which read: "Before leaving the voting compartment, the voter shall fold his ballot without displaying the markings thereof, but so that the words 'OFFICIAL BALLOT,' followed by the designation of the voting precinct and the date of the election, shall be visible to the officers of the election. He shall then cast his ballot by handing the same to one (1) of the managers of the election for deposit in the ballot box; this he shall do without undue delay, and as soon as he has voted he shall quit the inclosed place at once" and divided them into the present third through fifth sentences; and made gender neutral and minor stylistic changes throughout.

**Cross References —**

Inspection and challenge by candidate or respresentative, see § 23-15-577.

## JUDICIAL DECISIONS

### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-5-151.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-5-151.**

The special tribunal committed no error in refusing to count ballots which were not initialed by the initialing manager of the election and which were improperly identified. Starnes v. Middleton, 226 Miss. 81, 83 So. 2d 752, 1955 Miss. LEXIS 610 (Miss. 1955).

The county Democratic executive committee in making the recount of votes had a right to reject ballots which were not properly marked according to the provisions of the statute, but the committee had no right to reject ballots which were properly marked and which had been counted by the managers of the election and were not shown to be invalid. Prather v. Ducker, 225 Miss. 227, 82 So. 2d 897, 1955 Miss. LEXIS 575 (Miss. 1955).

A ballot marked with a straight line should be rejected. Prather v. Ducker, 225 Miss. 227, 82 So. 2d 897, 1955 Miss. LEXIS 575 (Miss. 1955).

In School District Bond Election contest, a ballot marked in pencil should not have been counted. Tedder v. Board of Sup'rs, 214 Miss. 717, 59 So. 2d 329, 1952 Miss. LEXIS 512 (Miss. 1952).

Ballot indicating thereon, from wavering and imperfect cross mark placed opposite contestant's name, that it was cast either by an aged person or by one with a palsied hand, was wrongfully rejected as having distinguishing marks. Evans v. Hood, 195 Miss. 743, 15 So. 2d 37, 1943 Miss. LEXIS 134 (Miss. 1943).

Ballots should not be rejected as having distinguishing marks because of slight irregularities in manner of marking. Tonnar v. Wade, 153 Miss. 722, 121 So. 156, 1929 Miss. LEXIS 56 (Miss. 1929).

Voters may write name of candidate not nominated on the official ballot only in case of the death of a candidate. McKenzie v. Boykin, 111 Miss. 256, 71 So. 382, 1916 Miss. LEXIS 283 (Miss. 1916).

Two crosses (XX) do not vitiate a ballot under this section [Code 1942, § 3 269]. Kelly v. State, 79 Miss. 168, 30 So. 49, 1901 Miss. LEXIS 31 (Miss. 1901) but see Wade v. Williams, 517 So. 2d 573, 1987 Miss. LEXIS 2971 (Miss. 1987).

The voter's choice cannot be indicated by a straight mark opposite a name or by erasing a name, and ballots so prepared cannot be counted. Kelly v. State, 79 Miss. 168, 30 So. 49, 1901 Miss. LEXIS 31 (Miss. 1901) but see Wade v. Williams, 517 So. 2d 573, 1987 Miss. LEXIS 2971 (Miss. 1987).

### RESEARCH REFERENCES

**Am. Jur.**
26 Am. Jur. 2d, Elections §§ 316-332.

**CJS.**
29 C.J.S., Elections §§ 538, 539, 541–548.

**Law Reviews.**
Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

## § 23-15-553. Ballots not to be removed before close of polls; procedure regarding spoiled ballots when polls close.

A person shall not take or remove any ballot from the polling place before the close of the polls. If any voter spoils a ballot he or she may obtain others, one (1) at a time, not exceeding three (3) in all, upon returning each spoiled ballot. The word "SPOILED" shall be written across the face of the ballot and each ballot shall be deposited into the sealed ballot box. When the polls have closed upon the casting of the last ballot or 7:00 p.m., whichever is later, and the poll managers break the seal on the ballot box to begin closing procedures, those ballots marked as "SPOILED" shall be bundled together and placed in a separate strong envelope provided for spoiled ballots. The envelope containing all spoiled ballots shall be sealed in the ballot box once the poll managers have completed the closing procedures and returned the materials to the officials in charge of the election.

**HISTORY:**
Derived from 1972 Code § 23-5-155 [Codes, 1892, § 3665; 1906, § 4172; Hemingway's 1917, § 6806; 1930, § 6242; 1942, § 3271; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 176; Laws, 2017, ch.

441, § 112, eff from and after July 1, 2017.

**Amendment Notes —**
The 2017 amendment added the last three sentences; and made a gender neutral change.

### RESEARCH REFERENCES

**Am. Jur.**
26 Am. Jur. 2d, Elections §§ 316-332.

**CJS.**
29 C.J.S., Elections §§ 541–548.

## § 23-15-555. Repealed.

Repealed by Laws of 2016, ch. 430, § 22, effective from and after January 1, 2017.

§ 23-15-555. [Derived from 1972 Code § 23-5-159 [Codes, 1892, § 3668; 1906, § 4175; Hemingway's 1917, § 6809; 1930, § 6245; 1942, § 3274; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 177, eff from and after January 1, 1987.]

**Editor's Notes —**
Former § 23-15-555 provided the penalty for a voter unlawfully showing a mark on the voter's ballot or making a false statement as to the voter's inability to mark the ballot.

## § 23-15-557. Municipality's authority to establish precincts and polling places.

The governing authorities of any municipality within the State of Mississippi are hereby authorized and empowered, in their discretion, to divide the municipality into a sufficient number of voting precincts of such size and location as is necessary, and there shall be the same number of polling places. The authority conducting an election shall not be required, however, to establish a polling place in each of said precincts, but such election authorities, whether in a primary or in a general election, may locate and establish such polling places, without regard to precinct lines, in such manner as in the discretion of such authority will better accommodate the electorate and better facilitate the holding of the election.

**HISTORY:**
Derived from 1972 Code § 21-11-21 [Codes, 1942, § 3374-69.7; Laws, 1958, ch. 516; repealed by Laws, 1986, ch 495, § 329]; en, Laws, 1986, ch. 495, § 178, eff from and after January 1, 1987.

### OPINIONS OF THE ATTORNEY GENERAL

If governing authorities make determination that ward is of such size and population that more than one precinct is required, then they may divide ward into two or more precincts; governing authorities may but are not required to establish polling place in each precinct but there must be same number of polling places as precincts, and governing authorities may locate polling places without regard to precinct lines. 1994 Miss. Op. Att'y Gen. 870.

There must be the same number of polling places as precincts, although the governing authorities may locate polling places without regard to precinct lines; any changes to precincts, whether adding to the number or moving any precincts, must be submitted to the

United States Department of Justice for approval pursuant to Section 5 of the Voting Rights Act of 1965. 1998 Miss. Op. Att'y Gen. 431.

RESEARCH REFERENCES

**Am. Jur.**
25 Am. Jur. 2d, Elections §§ 8-18, 22-33, 37, 59-60, 63, 64, 65-69.
26 Am. Jur. 2d, Elections § 305.

**CJS.**
29 C.J.S., Elections §§ 138, 139, 529, 530.

## § 23-15-559. Repealed.

Repealed by Laws of 2017, ch. 430, § 200, effective from and after July 1, 2017.

§ 23-15-559. [Derived from 1972 Code § 21-11-23 [Codes, 1942, §§ 3374-68, 3374-11; Laws, 1950, ch. 491, §§ 68, 111; repealed by Laws, 1986, ch. 495, § 329]; en, Laws, 1986, ch. 495, § 179, eff from and after January 1, 1987.]

**Editor's Notes —**
Former § 23-15-559 provided the times for holding primary and general elections for municipalities that operate under a special or private charter. For present similar provisions, see § 23-15-173

## § 23-15-561. Penalties for unlawful lottery.

(1) It shall be unlawful during any primary or any other election for any candidate for any elective office or any representative of such candidate or any other person to publicly or privately put up or in any way offer any prize, cash award or other item of value to be raffled, drawn for, played for or contested for in order to encourage persons to vote or to refrain from voting in any election.

(2) Any person who shall violate the provisions of subsection (1) of this section shall, upon conviction thereof, be punished by a fine in an amount not to exceed Five Thousand Dollars ($5,000.00).

(3) Any candidate who shall violate the provisions of subsection (1) of this section shall, upon conviction thereof, in addition to the fine prescribed above, be punished by:

(a) Disqualification as a candidate in the race for the elective office; or

(b) Removal from the elective office, if the offender has been elected thereto.

**HISTORY:**
Laws, 1986, ch. 495, § 180, eff from and after January 1, 1987.

RESEARCH REFERENCES

**Am. Jur.**
26 Am. Jur. 2d, Elections §§ 353, 450, 467-477.

**CJS.**
29 C.J.S., Elections §§ 575, 576, 578–583

**Lawyers' Edition.**
Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L. Ed. 2d 1960.
Criminal liability, under 18 USCS §§ 241, 242, for depriving, or conspiring to deprive, a

person of his civil rights – Supreme Court cases. 20 L. Ed. 2d 1454.

**Law Reviews.**

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

## § 23-15-563. Qualified elector required to provide identification before voting; kinds of identification; voting by affidavit ballot.

(1) Each person who appears to vote in person at a polling place or the registrar's office shall be required to identify himself or herself to a poll manager or the registrar by presenting current and valid photo identification before such person shall be allowed to vote.

(2) The identification required by subsection (1) of this section shall include, but not be limited to, the following:

(a) A current and valid Mississippi driver's license;

(b) A current and valid identification card issued by a branch, department, agency or entity of the State of Mississippi;

(c) A current and valid United States passport;

(d) A current and valid employee identification card containing a photograph of the elector and issued by any branch, department, agency or entity of the United States government, the State of Mississippi, or any county, municipality, board, authority or other entity of this state;

(e) A current and valid Mississippi license to carry a pistol or revolver;

(f) A valid tribal identification card containing a photograph of the elector;

(g) A current and valid United States military identification card;

(h) A current and valid student identification card, containing a photograph of the elector, issued by any accredited college, university or community or junior college in the State of Mississippi; and

(i) An official Mississippi voter identification card containing a photograph of the elector.

(3)(a) A person who appears to vote in person at a polling place and does not have identification as required by this section may vote by affidavit ballot. The affidavit ballot shall then be counted if the person shall present acceptable photo identification to the registrar within five (5) days.

(b) An elector who has a religious objection to being photographed may vote by affidavit ballot, and the elector, within five (5) days after the election, shall execute an affidavit in the registrar's office affirming that the exemption applies.

(4) The intentional failure of an election official to require a voter to present identification as required by this section shall be considered corrupt conduct under Section 97-13-19 and shall be reported to the Secretary of State and the Attorney General.

**HISTORY:**

Laws, 2012, ch. 526, § 1; Laws, 2017, ch. 441, § 113, eff from and after July 1, 2017; brought forward without change, Laws, 2018, ch. 344, § 2, eff from and after passage (approved March 8, 2018).

**Editor's Notes —**

The effective date of the bill that amended this section, Chapter 526, Laws of 2012 (House Bill No. 921), is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bill was submitted to the United States Attorney General under Section 5, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. Chapter 526 was submitted to the United States Attorney General before the *Shelby County* decision was rendered. In a letter dated August 5, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 526 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 526, so Chapter 526 became effective on the date of the response letter from the United States Attorney General, August 5, 2013.

**Amendment Notes —**

The 2017 amendment, in (1), substituted "who appears" for "who shall appear" and "a poll manager" for "an election manager"; deleted (4), which read: "Any person who utilizes the provisions of this section to intimidate a voter, or to prevent from voting a person who is otherwise qualified to vote shall, upon conviction, be sentenced to pay a fine of not less than Five Thousand Dollars ($5,000.00), or by imprisonment for not less than one (1) year nor more than five (5) years, or both"; and redesignated former (5) as (4).

The 2018 amendment brought the section forward without change.

## SUBARTICLE B.

## AFFIDAVIT BALLOTS AND CHALLENGED BALLOTS.

Sec.

23-15-571. Challenge to voter qualifications.
23-15-573. Certain persons not to vote except by affidavit ballot; form of affidavit ballot envelope; procedure after voting by affidavit ballot when acceptable photo identification was not presented.
23-15-574. Modification of affidavit form by Secretary of State.
23-15-575. Who may vote in primary election.
23-15-577. Presence of credentialed poll watchers and candidates at polling place; presentation of written authorization of candidate or political party by credentialed poll watcher to poll manager; inspection and challenge of qualifications of voter by candidate or credentialed poll watcher; interference in election process by candidates and credentialed poll watchers prohibited.
23-15-579. Procedure when vote challenged.
23-15-581. Closing polls, opening ballot box and counting votes.

### § 23-15-571. Challenge to voter qualifications.

(1) The following persons shall be designated as authorized challengers and shall be allowed to challenge the qualifications of any person offering to vote:

(a) Any candidate whose name is on the ballot in the precinct in which the challenge is made;

(b) Any official poll watcher of a candidate whose name is on the ballot in the precinct in which the challenge is made;

(c) Any official poll watcher of a political party for the precinct in which the challenge is made;

(d) Any qualified elector from the precinct in which the challenge is made; or

(e) Any poll manager or poll worker in the polling place where the person whose qualifications are challenged is offering to vote.

(2) The challenge of any authorized challenger shall be considered and acted upon by the poll managers of the election.

(3) A person offering to vote may be challenged upon the following grounds:

(a) That the voter is not a registered voter in the precinct;

(b) That the voter is not the registered voter under whose name the voter has applied to vote;

(c) That the voter has already voted in the election;

(d) That the voter is not a resident in the precinct where the voter is registered;

(e) That the voter has illegally registered to vote;

(f) That the voter has removed his or her ballot from the polling place; or

(g) That the voter is otherwise disqualified by law.

**HISTORY:**

Laws, 1986, ch. 495, § 181; Laws, 2017, ch. 441, § 114, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment, substituted "poll manager or poll worker" for "manager, clerk or poll worker" in (1)(e); inserted "poll" in (2); and in (3), substituted "the voter" for "he" throughout, and inserted "or her" in (f).

## JUDICIAL DECISIONS

**1. Enforcement.**

On a challenge against defendants, the Mississippi Governor, Secretary of State, and Attorney General, while Miss. Code Ann. § 23-15-575 provided for closed primary elections, there was no party registration and Miss. Code Ann. § 23-15-571's challenge procedure afforded no practical protection; it unconstitutionally infringed on plaintiff Mississippi Democratic Party's First Amendment disassociation right and the Mississippi Legislature had to pass a new primary system by April 1, 2008. Miss. State Democratic Party v. Barbour, 491 F. Supp. 2d 641, 2007 U.S. Dist. LEXIS 41908 (N.D. Miss. 2007), rev'd, vacated, 529 F.3d 538, 2008 U.S. App. LEXIS 11395 (5th Cir. Miss. 2008).

## OPINIONS OF THE ATTORNEY GENERAL

Regarding the question whether it is legal for a vote cast in the Democratic primary to be challenged simply because the poll worker or someone from the local Democratic Party alleges that the voter is really a Republican or Republican supporter, the stated intent of the voter would be controlling. 2003 Miss. Op. Att'y Gen. 15.

The vote of a person who is forced to cast a "challenged" or "rejected" ballot pursuant to Section 23-15-579 will not be counted in determining the initial outcome of the election; however, in an election contest the circuit court may order that such be counted if it determines that the challenges had no basis in fact or in law. 2003 Miss. Op. Att'y Gen. 15.

A registered voter may not cast a lawful ballot in a voting precinct other than the precinct where he or she resides. 2003 Miss. Op. Att'y Gen. 345.

## RESEARCH REFERENCES

**Am. Jur.**
26 Am. Jur. 2d, Elections § 308.

**CJS.**
29 C.J.S., Elections §§ 536, 537.

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

## § 23-15-573. Certain persons not to vote except by affidavit ballot; form of affidavit ballot envelope; procedure after voting by affidavit ballot when acceptable photo identification was not presented.

(1) If any person declares that he or she is a registered voter in the jurisdiction in which he or she offers to vote and that he or she is eligible to vote in the election, but his or her name does not appear upon the pollbooks, or that he or she is not able to cast a regular election day ballot under a provision of state or federal law but is otherwise qualified to vote, or that he or she has been illegally denied registration, or that he or she is unable to present an acceptable form of photo identification:

(a) A poll manager shall notify the person that he or she may cast an affidavit ballot at the election.

(b) The person shall be permitted to cast an affidavit ballot at the polling place upon execution of a written affidavit before one (1) of the poll managers stating that the individual:

(i) Believes he or she is a registered voter in the jurisdiction in which he or she desires to vote and is eligible to vote in the election; or

(ii) Is not able to cast a regular election day ballot under a provision of state or federal law but is otherwise qualified to vote; or

(iii) Believes that he or she has been illegally denied registration; or

(iv) Is unable to present an acceptable form of photo identification.

(c) The poll manager shall allow the individual to mark a paper ballot properly endorsed by the initialing poll manager or alternate initialing poll manager in accordance with Section 23-15-541, which shall be delivered by him or her to the proper election official who shall enclose it in an affidavit ballot envelope, with the written and signed affidavit of the voter affixed to the envelope, seal the envelope and mark plainly upon it the name of the person offering to vote.

(2) The affidavit ballot envelope shall include:

(a) The complete name of the voter;

(b) A present and previous physical and mailing address of the voter;

(c) Telephone numbers where the voter may be contacted;

(d) A statement that the affiant believes he or she is registered to vote in the jurisdiction in which he or she offers to vote;

(e) The signature of the affiant; and

(f) The signature of the poll manager at the polling place at which the affiant offers to vote.

(3)(a) A separate receipt book shall be maintained for affidavit voters and the affidavit voters shall sign the receipt book upon completing the affidavit ballot.

(b) If the affidavit voter is casting an affidavit ballot because the voter is unable to present an acceptable form of photo identification and the voter's name appears in the pollbook, then the poll manager shall write "NO ID" across from the voter's name and in the appropriate column in the pollbook.

(c) In canvassing the returns of the election, the executive committee in primary elections, or the election commissioners in other elections, shall examine the records and allow the ballot to be counted, or not counted as it appears legal.

(d) An affidavit ballot of a voter who was unable to present an acceptable form of photo identification shall not be rejected for this reason if the voter does either of the following:

(i) Returns to the circuit clerk's office, or to the municipal clerk's office for municipal elections, within five (5) business days after the date of the election and presents an acceptable form of photo identification;

(ii) Returns to the circuit clerk's office within five (5) business days after the date of the election to obtain the Mississippi Voter Identification Card, or in municipal election, returns to the municipal clerk's office within five (5) business days after the date of the election to present his or her Mississippi Voter Identification Card or Temporary Mississippi Voter Identification Card; or

(iii) Returns to the circuit clerk's office, or to the municipal clerk's office for municipal elections, within five (5) business days after the date of the election to execute a separate Affidavit of Religious Objection.

(4) When a person is offered the opportunity to vote by affidavit ballot, he or she shall be provided with written information that informs the person how to ascertain whether his or her affidavit ballot was counted and, if the vote was not counted, the reasons the vote was not counted.

(5) The officials in charge of the election shall process all affidavit ballots by using the Statewide Elections Management System. The officials in charge of the election shall account for all affidavit ballots cast in each election, categorizing the affidavit ballots cast by reason and recording the total number of affidavit ballots counted and not counted in each such category in the Statewide Elections Management System.

(6) The Secretary of State shall, by rule duly adopted, establish a uniform affidavit ballot envelope that shall be used in all elections in this state. The Secretary of State shall print and distribute a sufficient number of affidavit ballot envelopes to the registrar of each county for use in elections. The registrar shall distribute the affidavit ballot envelopes to municipal and county executive committees for use in primary elections and to municipal and county election commissioners for use in all other elections.

(7) County registrars and municipal registrars shall maintain a secure free access system that complies with the Help America Vote Act of 2002, by which persons who vote by affidavit ballot may determine if their ballots were counted, and if not, the reasons the ballot was not counted.

(8) Any person who votes in any election as a result of a federal or state court order or other order extending the time established by law for closing the polls on an election day, may only vote by affidavit ballot. Any affidavit ballot cast under this subsection shall be separated and kept apart from other affidavit ballots cast by voters not affected by the order.

**HISTORY:**

Derived from 1942 Code § 3114 [Codes, 1906, § 3703; Hemingway's 1917, § 6395; 1930, § 5872; repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; en, Laws, 1986, ch. 495, § 182; Laws, 2000, ch. 518, § 1; Laws, 2004, ch. 305, § 15; Laws, 2017, ch. 441, § 115, eff from and after passage (approved Apr. 18, 2017.); Laws, 2018, ch. 344, § 1, eff from and after passage (approved March 8, 2018).

**Editor's Notes —**

On August 11, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 518.

Laws of 2004, ch. 305, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the "Mississippi Help America Vote Act of 2002 Compliance Law."

On July 12, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2004, ch. 305, § 15.

Laws of 2017, ch. 441, § 205 provides:

"SECTION 205. This act shall take effect and be in force from and after July 1, 2017, except for Sections 3, 9, 13, 14, 15, 18, 19, 21, 24, 31, 70, 108, 115, 116, 117, 118, 119, 184 and 188, which shall take effect and be in force from and after passage [approved April 18, 2017]."

**Amendment Notes —**

The 2017 amendment, effective April 18, 2017, in (1), added "or that he or she is unable to present an acceptable form of photo identification" at the end of the introductory paragraph, substituted "poll managers " for "managers of election" in (b), added (b)(iv), and rewrote (c), which read: "The manager shall allow the individual to prepare his vote which shall be delivered by him to the proper election official who shall enclose it in an envelope with the written affidavit of the voter, seal the envelope and mark plainly upon it the name of the person offering to vote"; in (2), inserted "ballot envelope" in the introductory paragraph, rewrote (a), which read: "The complete name, all required addresses and telephone numbers," added (b) and (c) and redesignated the remaining paragraphs accordingly, and substituted "polling place" for "precinct" in (f); in (3), substituted "receipt book" for "register" twice, and substituted "affidavit voters" for "affidavit ballots" the first time it appears and "affiant" the second time it appears in (a), added (b), redesignated former (b) as (c), and added (d); added (5), and redesignated former (5) through (7) as (6) through (8); in (6), deleted "affidavit and" preceding "affidavit ballot envelope" and "affidavits and" for "affidavit ballot envelopes" twice; inserted "on an election day" in (8); and made gender neutral and minor stylistic changes.

The 2018 amendment, in (2)(c), inserted "or to the municipal clerk's office for municipal elections" in (i) and (iii), and added "or in municipal election, returns to the municipal clerk's office within five (5) business days after the date of the election to present his or her Mississippi Voter Identification Card or Temporary Mississippi Voter Identification Card" in (ii).

**Cross References —**

Provision that an elector who moves from one ward or voting precinct to another within the same municipality or supervisor's district within 30 days of an election shall be entitled to vote in his new ward or voting precinct by affidavit ballot as provided in this section, see § 23-15-13.

Requirement that name be on pollbook in order to vote unless provisions of this section are followed, see § 23-15-153.

Modification of affidavit form by Secretary of State, see § 23-15-574.

**Federal Aspects—**

The Help America Vote Act of 2002, referred to in this section, is Act of Oct. 29, 2002, P.L. 107-252, which formerly appeared as 42 USCS § 15301 et seq. and is now codified as 52 USCS § 20901 et seq. For full classification of the Act, consult USCS Tables volumes.

## JUDICIAL DECISIONS

**1. In general.**

Election commission does not have the authority to open ballots certified by election managers as rejected or challenged, and commission cannot override or review decision of election manager who marked ballot as rejected or challenged; duty of commission is merely to canvass sealed ballots to determine if requirements have been met. Misso v. Oliver, 666 So. 2d 1366, 1996 Miss. LEXIS 4 (Miss. 1996).

Only power conferred, and only duty required of election commission, in relation to the canvass of votes, should be to count the votes, based upon returns as made by election managers, and to give certificates to those receiving majority of the votes; election commission should not go beyond or behind the returns, and reject votes, or accept votes previously rejected, or otherwise inquire into validity of conduct of election; election commission has no judicial discretion as to validity of rejected or contested votes. Misso v. Oliver, 666 So. 2d 1366, 1996 Miss. LEXIS 4 (Miss. 1996).

Where a person's name fails to appear upon the pollbooks, the affidavit required by § 23-15-573 is a condition precedent to permission to vote; the making of the proper affidavit in writing before an election manager is mandatory, not directory. Hatcher v. Fleeman, 617 So. 2d 634, 1993 Miss. LEXIS 149 (Miss. 1993), overruled in part, Smith v. Hollins, 905 So. 2d 1267, 2005 Miss. LEXIS 388 (Miss. 2005).

The paper ballots cast by two voters were illegal and void where the voters' names had been removed from the pollbooks and the ballots did not contain written affidavits attesting to the voters' entitlement to vote. Hatcher v. Fleeman, 617 So. 2d 634, 1993 Miss. LEXIS 149 (Miss. 1993), overruled in part, Smith v. Hollins, 905 So. 2d 1267, 2005 Miss. LEXIS 388 (Miss. 2005).

A special election was not warranted after the disqualification of 2 ballots by a special judge in an election contest hearing, even though the disqualification changed the result of the election, the election contest hearing was not held in the county where the dispute originated, the election commissioners were not issued subpoenas, and the originally successful candidate claimed he was not given reasonable notice of the hearing, where the 2 disqualified "affidavit" ballots were not in compliance with § 23-15-573 and were therefore illegal. Hatcher v. Fleeman, 617 So. 2d 634, 1993 Miss. LEXIS 149 (Miss. 1993), overruled in part, Smith v. Hollins, 905 So. 2d 1267, 2005 Miss. LEXIS 388 (Miss. 2005).

The initialling requirement found in § 23-15-541 does not apply to affidavit ballots. Wilbourn v. Hobson, 608 So. 2d 1187, 1992 Miss. LEXIS 445 (Miss. 1992).

Six affidavit ballots which were opened by poll workers at one precinct were not void where there was no evidence of fraud or intentional wrongdoing; while § 23-15-573 indicates that ballots shall be counted by the election commissioners in a general election, the statute is silent as to when, where and by whom the ballots may or shall be opened. Wilbourn v. Hobson, 608 So. 2d 1187, 1992 Miss. LEXIS 445 (Miss. 1992).

## OPINIONS OF THE ATTORNEY GENERAL

Ballots cast by individuals not appearing on the pollbooks that did not contain accompanying affidavits as required by the statute were improperly cast and should not be counted. 1999 Miss. Op. Att'y Gen. 697.

This section and the prescribed form make it mandatory that the affidavit contain the name of the voter, the physical addresses (former and present if they have moved within the county) of the voter, telephone numbers (if the voter has such numbers), the signature of the voter and the signature of one of the election managers. Additionally, the voter must check the appropriate box on the form indicating the reason he or she is entitled to vote. 2003 Miss. Op. Att'y Gen. 497.

## RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 312, 358-362, 364, 373.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 101 et seq. (election contests).

**CJS.**

29 C.J.S., Elections §§ 562, 563, 570–572, 573.

## § 23-15-574. Modification of affidavit form by Secretary of State.

If the enactment of any state or federal law shall require any modification to the form or language of the affidavit prescribed in Section 23-15-573, then the Secretary of State shall be authorized to promulgate an amended form of the affidavit to comply with the requirements of any such state or federal law, which shall be required to be used in all elections throughout this state.

**HISTORY:**

Laws, 2000, ch. 518, § 2, eff from and after August 11, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the enactment of this section).

**Editor's Notes —**

On August 11, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the enactment of this section by Laws of 2000, ch. 518.

## § 23-15-575. Who may vote in primary election.

No person shall vote or attempt to vote in the primary election of one (1) party when he or she has voted on the same date in the primary election of another party. No person shall vote or attempt to vote in the second primary election of one (1) party when he or she has voted in the first primary election of another party.

**HISTORY:**

Derived from 1942 Code § 3129 [Codes, 1906, § 3717; Hemingway's 1917, § 6409; 1930, § 5887; Laws, 1932, ch. 238; Laws, 1934, ch. 308; Laws, 1947, 1st Ex. sess. ch. 17, §§ 1-3; Laws, 1948, ch. 309, §§ 1, 2; repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; en, Laws, 1986, ch. 495, § 183; Laws, 2017, ch. 441, § 116, eff from and after passage (approved Apr. 18, 2017).

**Editor's Notes —**

Laws of 2017, ch. 441, § 205 provides:

"SECTION 205. This act shall take effect and be in force from and after July 1, 2017, except for Sections 3, 9, 13, 14, 15, 18, 19, 21, 24, 31, 70, 108, 115, 116, 117, 118, 119, 184 and 188, which shall take effect and be in force from and after passage [approved April 18, 2017]."

**Amendment Notes —**

The 2017 amendment, effective April 18, 2017, rewrote the section, which read: "No person shall be eligible to participate in any primary election unless he intends to support the nominations made in the primary in which he participates."

### JUDICIAL DECISIONS

#### ANALYSIS

1. Constitutionality.
2. Relation to other laws.

**1. Constitutionality.**

Although plaintiff political party unquestionably pleaded a constitutional injury by alleging that Mississippi's semi-closed primary statute required it to associate with members of the other party during its candidate-selection process, it took no internal steps to limit participation in its primaries to party members and thus could not claim that Miss. Code Ann. § 23-15-575 actually had an unconstitutional effect; this lack of "actual controversy" made the case too remote and abstract an inquiry for the proper exercise of the judicial function under U.S. Const. Art. III. Miss. State Democratic Party v. Barbour, 529 F.3d 538, 2008 U.S. App. LEXIS 11395 (5th Cir. Miss. 2008).

Miss. Code Ann. § 23-15-575's primary system unconstitutionally infringed on Mississippi political parties' First Amendment right to disassociate non-members from their nomination process. Miss. State Democratic Party v. Barbour, 491 F. Supp. 2d 641, 2007 U.S. Dist. LEXIS 41908 (N.D. Miss. 2007), rev'd, vacated, 529 F.3d 538, 2008 U.S. App. LEXIS 11395 (5th Cir. Miss. 2008).

On a challenge against defendants, the Mississippi Governor, Secretary of State, and Attorney General, while Miss. Code Ann. § 23-15-575 provides for closed primary elections, there was no party registration and Miss. Code Ann.

§ 23-15-571's challenge procedure afforded no practical protection; it unconstitutionally infringed on plaintiff Mississippi Democratic Party's First Amendment disassociation right and the Mississippi Legislature had to pass a new primary system by April 1, 2008. Miss. State Democratic Party v. Barbour, 491 F. Supp. 2d 641, 2007 U.S. Dist. LEXIS 41908 (N.D. Miss. 2007), rev'd, vacated, 529 F.3d 538, 2008 U.S. App. LEXIS 11395 (5th Cir. Miss. 2008).

**2. Relation to other laws.**

Black chairman of a county political party executive committee was guilty of racial discrimination under § 2 of the Voting Rights Act because, inter alia, he enforced the party loyalty requirements set forth in Miss. Code Ann. § 23-15-575 in contravention of the state attorney general's express recommendation. United States v. Brown, 494 F. Supp. 2d 440, 2007 U.S. Dist. LEXIS 47255 (S.D. Miss. 2007), aff'd, 561 F.3d 420, 2009 U.S. App. LEXIS 4030 (5th Cir. Miss. 2009).

## OPINIONS OF THE ATTORNEY GENERAL

Regarding the question whether it is legal for a vote cast in the Democratic primary to be challenged simply because the poll worker or someone from the local Democratic Party alleges that the voter is really a Republican or Republican supporter, the stated intent of the voter would be controlling. 2003 Miss. Op. Att'y Gen. 15.

The vote of a person who is forced to cast a "challenged" or "rejected" ballot pursuant to Section 23-15-579 will not be counted in determining the initial outcome of the election; however, in an election contest the circuit court may order that such be counted if it determines that the challenges had no basis in fact or in law. 2003 Miss. Op. Att'y Gen. 15.

A poll worker, poll watcher or another voter is not allowed to ask a voter if he or she intends to support the nominees of the party once the voter presents himself or herself to vote. Challenges may be made pursuant to Section 23-15-579 only for the reasons listed in Section 23-15-571, and for the reason that the voter does not intend to support the nominees of the party per this section. 2003 Miss. Op. Att'y Gen. 316.

If a challenge of a voter is properly initiated in strict accordance with Section 23-15-579 and the voter then openly declares that he or she does not intend to support the nominees of the party, the poll workers could find the challenge to be well taken and mark the ballot "challenged" or "rejected" consistent with the provisions of said statute; on the other hand, if the voter openly declares his or her intent to support the nominees, then a challenge is not proper under this section. 2003 Miss. Op. Att'y Gen. 316.

Absent an obvious factual situation such as an independent candidate attempting to vote in a party's primary, the stated intent of the voter is controlling. 2003 Miss. Op. Att'y Gen. 316.

## RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 236, 237.

**CJS.**

29 C.J.S., Elections §§ 330–336.

**Law Reviews.**

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

## § 23-15-577. Presence of credentialed poll watchers and candidates at polling place; presentation of written authorization of candidate or political party by credentialed poll watcher to poll manager; inspection and challenge of qualifications of voter by candidate or credentialed poll watcher; interference in election process by candidates and credentialed poll watchers prohibited.

(1) Each candidate on the ballot shall have the right, either in person or by a credentialed poll watcher, to be present at the polling place. In general and special elections, each political party that has a candidate on the ballot shall

have the right to be represented at the polling place by two (2) credentialed poll watchers.

(2) A credentialed poll watcher means a poll watcher of good conduct and behavior, authorized in writing to act as the representative of a candidate on the ballot or political party that has a candidate on the ballot. The written authorization of the candidate or political party must be presented to a poll manager by the certified poll watcher upon arrival at the polling place.

(3) Poll managers shall provide candidates and credentialed poll watchers with a suitable position from which they may be able to clearly see and hear the manner in which the election is held. Candidates and credentialed poll watchers shall be authorized to bring their own pollbooks, whether in a print or electronic form, to the polling place during each general and special election.

(4) Candidates and credentialed poll watchers shall be allowed to challenge the qualifications of any person offering to vote, and their challenge shall be considered and acted upon by the poll managers. However, candidates and credentialed poll watchers shall not be allowed to interfere in the election process, which shall include, but not be limited to, the following:

(a) Communicating with any voter;

(b) Physically touching or handling any ballot, absentee ballot envelope, absentee ballot application or affidavit ballot envelope;

(c) Viewing or photographing the pollbooks while at the polling place; or

(d) Photographing the receipt books while at the polling place.

**HISTORY:**

Derived from 1972 Code § 23-1-41 [Codes, 1906, § 3716; Hemingway's 1917, § 6408; 1930, § 5886; Laws, 1942, § 3128.5; Laws, 1970, ch. 506, § 7; repealed by Laws, 1986, ch. 495, § 331]; en, Laws, 1986, ch. 495, § 184; Laws, 2017, ch. 441, § 117, eff from and after passage (approved Apr. 18, 2017).

**Editor's Notes —**

Laws of 2017, ch. 441, § 205 provides:

"SECTION 205. This act shall take effect and be in force from and after July 1, 2017, except for Sections 3, 9, 13, 14, 15, 18, 19, 21, 24, 31, 70, 108, 115, 116, 117, 118, 119, 184 and 188, which shall take effect and be in force from and after passage [approved April 18, 2017]."

**Amendment Notes —**

The 2017 amendment, effective April 18, 2017, rewrote the section, which read: "Each candidate shall have the right, either in person or by a representative to be named by him, to be present at the polling place, and the managers shall provide him or his representative with a suitable position from which he or his representative may be able to carefully inspect the manner in which the election is held. He or his representative shall be allowed to challenge the qualifications of any person offering to vote, and his challenge shall be considered and acted upon by the managers."

**Cross References —**

Provision that, except for officers of an election and those appointed to assist them, and except for persons authorized by this section, no one is allowed in the room holding ballot boxes, compartments, tables, and shelves, see § 23-15-551.

## RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 308, 312.

**CJS.**

29 C.J.S., Elections §§ 536, 537,562, 563, 570–572.

## § 23-15-579. Procedure when vote challenged.

(1) All votes, which shall be challenged at the polls, whether the question be raised by a poll manager or another authorized challenger, shall be considered by the poll managers at that time.

(2) When it so clearly appears in the unanimous opinion of the poll managers, either by the admissions or statements of the person challenged or from documentary or oral evidence then presented to the poll managers, that the challenge is well taken, the vote shall be rejected entirely and shall not be counted. In such case, the challenged voter shall mark his or her choices and cast his or her vote by paper ballot. After the ballot has been marked by the challenged voter, it shall be marked by the poll manager on the back "REJECTED" and the name of the voter and the reason the ballot of the challenged voter was rejected shall also be written on the back of the ballot. All rejected ballots shall be placed in the ballot box until the close of the polls at which time, upon the opening of the ballot box, all rejected ballots shall be placed in a separate strong envelope and returned to the box.

(3) When it so clearly appears in the unanimous opinion of the poll managers, either by the admissions or statements of the person challenged or from documentary or oral evidence then presented to the poll managers, that the challenge is frivolous and not made in good faith, the poll managers shall disregard the challenge and the voter shall cast his or her vote as other voters in the polling place as though not challenged.

(4) When it does not so clearly appear whether the challenge is well taken or frivolous and no unanimous decision can be made by the poll managers, the challenged voter shall mark his or her choices and cast his or her vote by paper ballot. After the ballot has been marked by the challenged voter, it shall be marked by the poll managers on the back "CHALLENGED," and the name of the voter and the reason the challenge of the voter was made shall also be written on the back of the ballot. All challenged ballots shall be placed in the ballot box until the close of the polls at which time, upon the opening of the ballot box, all challenged ballots shall be removed therefrom and separately counted, tallied and totaled with a separate return made of the challenged votes. Challenged ballots shall be placed in a separate strong envelope, and returned to the ballot box.

**HISTORY:**

Derived from 1972 Code § 23-3-25 [Codes, 1942, § 3170; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, § 333]; en, Laws, 1986, ch. 495, § 185; Laws, 2017, ch. 441, § 118, eff from and after passage (approved Apr. 18, 2017).

**Editor's Notes —**

Laws of 2017, ch. 441, § 205 provides:

"SECTION 205. This act shall take effect and be in force from and after July 1, 2017, except for Sections 3, 9, 13, 14, 15, 18, 19, 21, 24, 31, 70, 108, 115, 116, 117, 118, 119, 184 and 188, which shall take effect and be in force from and after passage [approved April 18, 2017]."

**Amendment Notes —**

The 2017 amendment, effective April 18, 2017, rewrote the section, which read: "All votes which shall be challenged at the polls, whether the question be raised by a manager or by another authorized challenger, shall be received when voted, but each of such challenged votes shall, by one (1) of the managers or clerks, be marked on the back 'CHALLENGED' and all such challenged votes shall be placed in one or more strong envelopes; and when all the unchallenged votes have been counted, tallied and totaled the challenged votes shall then be counted, tallied and totaled and a separate return shall be made of the unchallenged votes and of those that are challenged. The envelope or envelopes containing the challenged votes, when counted and tallied, shall be securely sealed with all said challenged votes inclosed therein and placed in the box with the unchallenged votes. Provided, that when a vote is challenged at the polls it shall so clearly appear in the unanimous opinion of the managers, either by the admissions or statements of the person challenged or from official documentary evidence, or indubitable oral evidence then presented to the managers, that the challenge is well taken, the vote shall be rejected entirely and shall not be counted; but in such case the rejected ballot, after it has been marked by the challenged voter, shall be marked on the back 'REJECTED' and the name of the voter shall also be written on the back, and said vote and all other rejected votes shall be placed in a separate strong envelope and sealed and returned in the box as in the case of challenged votes. The failure of a candidate to challenge a vote or votes at a box shall not preclude him from later showing, in the manner provided by law, that one or more votes have been improperly received or counted or returned as regards said box. If the managers of an election believe a challenge of a voter is frivolous or not made in good faith they may disregard such challenge and accept the offered vote as though not challenged."

## JUDICIAL DECISIONS

**1. In general.**

On a challenge against defendants, the Mississippi Governor, Secretary of State, and Attorney General, while Miss. Code Ann. § 23-15-575 provides for closed primary elections, there was no party registration and the challenge procedure in Miss. Code Ann. § 23-15-571 and Miss. Code Ann. § 23-15-579 afforded no practical protection; it unconstitutionally infringed on plaintiff Mississippi Democratic Party's First Amendment disassociation right and the Mississippi Legislature had to pass a new primary system by April 1, 2008. Miss. State Democratic Party v. Barbour, 491 F. Supp. 2d 641, 2007 U.S. Dist. LEXIS 41908 (N.D. Miss. 2007), rev'd, vacated, 529 F.3d 538, 2008 U.S. App. LEXIS 11395 (5th Cir. Miss. 2008).

Election commission does not have the authority to open ballots certified by election managers as rejected or challenged, and commission cannot override or review decision of election manager who marked ballot as rejected or challenged; duty of commission is merely to canvass sealed ballots to determine if requirements have been met. Misso v. Oliver, 666 So. 2d 1366, 1996 Miss. LEXIS 4 (Miss. 1996).

Only power conferred, and only duty required of election commission, in relation to the canvass of votes, should be to count the votes, based upon returns as made by election managers, and to give certificates to those receiving majority of the votes; election commission should not go beyond or behind the returns, and reject votes, or accept votes previously rejected, or otherwise inquire into validity of conduct of election; election commission has no judicial discretion as to validity of rejected or contested votes. Misso v. Oliver, 666 So. 2d 1366, 1996 Miss. LEXIS 4 (Miss. 1996).

## OPINIONS OF THE ATTORNEY GENERAL

The vote of a person who is forced to cast a "challenged" or "rejected" ballot pursuant to Section 23-15-579 will not be counted in determining the initial outcome of the election; however, in an election contest the circuit court may order that such be counted if it determines that the challenges had no basis in fact or in law. 2003 Miss. Op. Att'y Gen. 15.

Statutory requirements applicable to the acquisition of computer equipment and services are also applicable to the acquisition of computer equipment and services necessary to implement a computerized statewide voter registration system under the Help America Vote Act (HAVA). However, acquisitions of computer equipment and services approved by ITS in order to implement a computerized voter registration system under HAVA will also have to be approved by the Secretary of State. 2004 Miss. Op. Att'y Gen. 340.

Challenged ballots should be counted, tallied and totaled and a separate return made at the courthouse or other central location after all unchallenged ballots have been counted, tallied and totaled. 2004 Miss. Op. Att'y Gen. 348.

The separate envelope containing the rejected ballots and the separate envelope containing the challenged ballots must be sealed and returned in the appropriate ballot box to be preserved in the registrar's office. Should an election contest be filed, the court before whom the contest is heard will decide what impact, if any, such ballots had on the election and will rule accordingly. 2004 Miss. Op. Att'y Gen. 348.

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 312, 358-362, 364, 373.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 101 et seq. (election contests).

**CJS.**

29 C.J.S., Elections §§ 562, 563, 570–572, 573.

## § 23-15-581. Closing polls, opening ballot box and counting votes.

When the last qualified voter, who was standing in line at the polling place at 7:00 p.m., has cast his or her ballot, or 7:00 p.m., whichever is later, the poll managers shall proclaim that the polls are closed and publicly break the seal and open the ballot box to immediately proceed to count the ballots, at the same time reading aloud the names of the persons voted for, which shall be taken down. During the holding of the election and the counting of the ballots, the whole proceedings shall be in fair and full view of the voting public, candidates or their duly authorized representatives and other authorized poll watchers, without unnecessary interference, delay or encroachment upon the good order of the duties and proceedings of the poll managers and other officers of the election. There shall be no unnecessary delay and no adjournment except as provided by law.

**HISTORY:**

Derived from 1972 Code § 23-3-13 [ (Codes, 1942, § 3164; Laws, 1935, ch. 19; Laws, 1960, ch. 448; 1857, ch. 4, art 12; 1871, §§ 370, 371; 1880, § 136; 1892, § 3648; 1906, § 4155; Hemingway's 1917, § 6789; 1930, § 6238; 1942, § 3267; Laws, 1916, ch. 230; Laws, 1960, ch. 451; Laws, 1964, ch. 511, § 1; repealed by Laws, 1986, ch. 495, §§ 333, 335]; en, Laws, 1986, ch. 495, § 186; Laws, 2017, ch. 441, § 119, eff from and after passage (approved Apr. 18, 2017).

**Editor's Notes —**

Laws of 2017, ch. 441, § 205 provides:

"SECTION 205. This act shall take effect and be in force from and after July 1, 2017, except for Sections 3, 9, 13, 14, 15, 18, 19, 21, 24, 31, 70, 108, 115, 116, 117, 118, 119, 184 and 188, which shall take effect and be in force from and after passage [approved April 18, 2017]."

**Amendment Notes —**

The 2017 amendment, effective April 18, 2017, rewrote the section, which read: "When the polls shall be closed, the managers shall then publicly open the box and immediately proceed to count the ballots, at the same time reading aloud the names of the persons voted for, which shall be taken down and called by the clerks in the presence of the managers. During the holding of the election and the counting of the ballots, the whole proceedings shall be in fair and full view of the voting public without unnecessary interference, delay or encroachment upon the good order of the duties and proceedings of the managers and other officers of the election. Candidates or their duly authorized representatives shall have the right to reasonably view and inspect the ballots as and when they are taken from the box and counted, and to reasonably view and inspect the tally sheets, papers and other documents used in said election during the proceedings, but not including, of course, the secret ballots being voted and placed and held in the box. There shall be no unnecessary delay and no adjournment except as provided by law."

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 358-362, 364, 373.

## JUDICIAL DECISIONS

### ANALYSIS

I. Under Current Law

1.-5. [Reserved for future use.]

II. Under Former Law.

6. Under Section 23-3-13, generally.
7. —Receipts.
8. —Right to view counting and calling of ballots.
9. —Evidence.
10. —Initialing ballot.
11. Under former Section 23-5-147.

### I. Under Current Law.

**1.-5. [Reserved for future use.]**

### II. Under Former Law.

**6. Under Section 23-3-13, generally.**

Opening the ballot box and removing the ballots or a part of them to a separate room for the purpose of counting while the election was still in progress was such a radical departure from the terms of this section and from the fundamental principles of the Corrupt Practices Law as to render the election void as to the precincts involved. Clark v. Rankin County Democratic Executive Committee, 322 So. 2d 753, 1975 Miss. LEXIS 1548 (Miss. 1975).

The requirements of this section [Code 1942, § 3164] are mandatory. Hathorn v. State, 147 So. 2d 286 (Miss. 1962).

Where there were only eighty illegal votes in a total vote of 1229, the illegal votes being only 6.5 per cent of the total votes cast, there was no such substantial failure to comply in material particulars with the statutes so as to invalidate the election. Walker v. Smith, 213 Miss. 255, 57 So. 2d 166, 1952 Miss. LEXIS 360 (Miss. 1952).

Where there is a total departure from the mandatory provisions of the statute and it is not possible to ascertain the will of the electors because a substantial portion of the votes were void, a new election should be ordered for the purpose of ascertaining the voter's choice. May v. Layton, 213 Miss. 129, 55 So. 2d 460, 56 So. 2d 89, 1951 Miss. LEXIS 519, 1952 Miss. LEXIS 340 (Miss. 1951).

Where the special tribunal held that votes of more than one-third of the voters in primary election for office of supervisor, were held void for failure to comply with mandatory provisions of the statute, it was impossible for one to reasonably say that result arrived at by the special tribunal represented the will of the voters. May v. Layton, 213 Miss. 129, 55 So. 2d 460, 56 So. 2d 89, 1951 Miss. LEXIS 519, 1952 Miss. LEXIS 340 (Miss. 1951).

This provision of the statute was enacted for the purpose of precluding any possibility of any qualified electors being counted as having voted who were not present at the voting precinct on election day, and not to prevent qualified electors from being deprived of the right to vote. Briggs v. Gautier, 195 Miss. 472, 15 So. 2d 209, 1943 Miss. LEXIS 139 (Miss.), limited, Allen v. Funchess, 195 Miss. 486, 15 So. 2d 343, 1943 Miss. LEXIS 143 (Miss. 1943).

The Corrupt Practices Act was designed to prevent election frauds and to prevent the election managers and others from "stuffing the ballot box". Hayes v. Abney, 186 Miss. 208, 188 So. 533, 1939 Miss. LEXIS 209 (Miss. 1939).

**7. —Receipts.**

The fact that contestant received majority of votes in precinct did not preclude him from urging illegality of election at such precinct. Briggs v. Gautier, 195 Miss. 472, 15 So. 2d 209, 1943 Miss. LEXIS 139 (Miss.), limited, Allen v. Funchess, 195 Miss. 486, 15 So. 2d 343, 1943 Miss. LEXIS 143 (Miss. 1943).

Failure of election officers to require voters to sign their names in the receipt book or other record kept for the purpose before receiving a ballot to cast in the election renders the election void, since such requirement is mandatory. Briggs v. Gautier, 195 Miss. 472, 15 So. 2d 209, 1943 Miss. LEXIS 139 (Miss.), limited, Allen v. Funchess, 195 Miss. 486, 15 So. 2d 343, 1943 Miss. LEXIS 143 (Miss. 1943).

The provision as to having the voter sign a receipt for his ballot is a prerequisite to his right to have a ballot and consequently to vote it, and in this respect the statute is mandatory. Hayes v. Abney, 186 Miss. 208, 188 So. 533, 1939 Miss. LEXIS 209 (Miss. 1939).

The total departure from the provisions of this Act, by the election officers in making a list of the voters and without requiring a single voter to receipt for his ballot, was such a departure as rendered a municipal primary election void. Hayes v. Abney, 186 Miss. 208, 188 So. 533, 1939 Miss. LEXIS 209 (Miss. 1939).

**8. —Right to view counting and calling of ballots.**

Counting and calling of the ballots for a voting precinct by two of the managers and their assistants in one room of courthouse while the remaining ballots were being counted and called by the other manager and his assistants in another room was a violation of this section [Code 1942, § 3164]. Briggs v. Gautier, 195 Miss. 472, 15 So. 2d 209, 1943 Miss. LEXIS 139 (Miss.), limited, Allen v. Funchess, 195

Miss. 486, 15 So. 2d 343, 1943 Miss. LEXIS 143 (Miss. 1943).

The voting public at a particular precinct is entitled to have a fair and full view of the counting and calling of the ballots as well as the holding of the election, which would be impossible if the ballots are divided for counting and some of them are being counted and called aloud at one place by one of the managers while the others are being counted and called aloud elsewhere by the other two managers. Briggs v. Gautier, 195 Miss. 472, 15 So. 2d 209, 1943 Miss. LEXIS 139 (Miss.), limited, Allen v. Funchess, 195 Miss. 486, 15 So. 2d 343, 1943 Miss. LEXIS 143 (Miss. 1943).

Under this section [Code 1942, § 3164] all the managers, and not just one manager, are required to count the ballots, and whatever is done by the clerks is to be done in the presence of the managers and not in the presence of only one manager. Briggs v. Gautier, 195 Miss. 472, 15 So. 2d 209, 1943 Miss. LEXIS 139 (Miss.), limited, Allen v. Funchess, 195 Miss. 486, 15 So. 2d 343, 1943 Miss. LEXIS 143 (Miss. 1943).

The right of the candidate to view and inspect the ballots as they are counted is denied if the managers are permitted to divide the ballots and count them at different places at one and the same time, unless the candidate is expected to anticipate such procedure and have a sufficient number of authorized representatives present. Briggs v. Gautier, 195 Miss. 472, 15 So. 2d 209, 1943 Miss. LEXIS 139 (Miss.), limited, Allen v. Funchess, 195 Miss. 486, 15 So. 2d 343, 1943 Miss. LEXIS 143 (Miss. 1943).

Allegations and proof by a contestant on a petition for judicial review of a primary election that a number of illegal votes were cast and counted to change the result of the election was sufficient, and he was not required to prove that enough of the illegal votes were actually cast for the contestee to give him the apparent, although not real, majority. Harris v. Stewart, 187 Miss. 489, 193 So. 339, 1940 Miss. LEXIS 226 (Miss. 1940).

**9. —Evidence.**

The rule that a contestant has the burden of proving the existence of illegal votes and that there were enough of such illegal votes cast for the contestee as to change the result of the election, applies as well to a party primary election for a nomination. Walker v. Smith, 213 Miss. 255, 57 So. 2d 166, 1952 Miss. LEXIS 360 (Miss. 1952).

Contestant is not bound to allege and prove as a condition precedent to a successful challenge of any particular ballot box that a decision in his favor as to that box alone would change the result of the election complained of, but he may show that the result of the election would be changed by having his challenge sustained. Briggs v. Gautier, 195 Miss. 472, 15 So. 2d 209, 1943 Miss. LEXIS 139 (Miss.), limited, Allen v. Funchess, 195 Miss. 486, 15 So. 2d 343, 1943 Miss. LEXIS 143 (Miss. 1943).

**10. —Initialing ballot.**

The provisions of this section [Code 1942, § 3164] with respect to the initialing of ballots applies only to a primary election and does not require ballots in a general or special election to be initialed. Hubbard v. McKey, 193 So. 2d 129, 1966 Miss. LEXIS 1277 (Miss. 1966).

A new election should be offered either in the entire district or in the precincts involved, where a third of the ballots cast were invalidated by the failure of the installing manager to initial them. Wallace v. Leggett, 248 Miss. 121, 158 So. 2d 746, 1963 Miss. LEXIS 382 (Miss. 1963).

Where primary election ballots were initialed on the back and the initials were those of the receiving manager and not of the initialing manager, the ballots should not be counted. Starnes v. Middleton, 226 Miss. 81, 83 So. 2d 752, 1955 Miss. LEXIS 610 (Miss. 1955).

The special tribunal committed no error in refusing to count ballots which were not initialed by the initialing manager of the election and which were improperly identified. Starnes v. Middleton, 226 Miss. 81, 83 So. 2d 752, 1955 Miss. LEXIS 610 (Miss. 1955).

Failure of the initialing manager to initial a ballot renders such ballot illegal. Chinn v. Cousins, 201 Miss. 1, 27 So. 2d 882, 1946 Miss. LEXIS 351 (Miss. 1946).

A special election with new managers, to be called by the governor pursuant to section 3187, Code 1942, was ordered in a precinct where none of the ballots cast were initialed by the initialing manager, the number of ballots there counted exceeding the difference in the vote counted for the two nominees, and the results in other precincts were allowed to stand after deduction of the few uninitialed ballots cast in those precincts. Chinn v. Cousins, 201 Miss. 1, 27 So. 2d 882, 1946 Miss. LEXIS 351 (Miss. 1946).

**11. Under former Section 23-5-147.**

The provisions of Code 1942, § 3164 requiring the initialing of ballots by the initialing manager applies only to primary elections and has no application to general or special elections conducted under this section [Code 1942, § 3267]. Hubbard v. McKey, 193 So. 2d 129, 1966 Miss. LEXIS 1277 (Miss. 1966).

In a school district bond election contest, where there were marks on both places on ballot but it was manifest that the voter intended to strike out his original vote against the bonds, and by his clear mark to vote for the bonds, the ballot should have been counted. Tedder v. Board of Sup'rs, 214 Miss. 717, 59 So. 2d 329, 1952 Miss. LEXIS 512 (Miss. 1952).

Fact that, pursuant to custom because of size of election district, two sets of election managers conducted the election at the voting place, did not render the votes cast thereat invalid, where one set of managers sat at one end of a table and received the ballots of persons whose names began with the letters "A" through "L," and the other set of managers sat at the other end of the table and received the ballots of persons whose names began with "M" through "Z," each set of managers using a separate ballot box and being assisted by separate clerks, and the ballots were counted and certified to by the respective managers who received them. Simmons v. Crisler, 197 Miss. 547, 20 So. 2d 85, 1944 Miss. LEXIS 319 (Miss. 1944).

Absentee ballots, larger in size than home ballots, and containing name of candidate who had not qualified, substantially complies with ballot requirements, in view of objects to be accomplished by and circumstances surrounding special statute permitting soldiers to vote by absentee ballots. Gregory v. Sanders, 195 Miss. 508, 15 So. 2d 432, 1943 Miss. LEXIS 154 (Miss. 1943).

Where voters had written in name of nominee for office and placed crosses opposite such name, ballots should be counted. Failure of commissioners to print nominee's name on ballot did not deprive voter of right to vote. State ex rel. Attorney Gen. v. Ratliff, 108 Miss. 242, 66 So. 538, 1914 Miss. LEXIS 195 (Miss. 1914).

## SUBARTICLE C.

## DETERMINING THE RESULTS OF ELECTIONS.

Sec.

| | |
|---|---|
| 23-15-591. | Proclamation of results; sealing of ballot box. |
| 23-15-593. | Irregularities in ballot box. |
| 23-15-595. | Procedure for sealing of ballot box; reopening and resealing. |
| 23-15-597. | Canvass of returns and announcement of results by executive committee. |
| 23-15-599. | Tabulated statement of party vote. |
| 23-15-600. | Forms for reporting election returns. |
| 23-15-601. | Canvass of returns and declaration of results by election commissioners; determination of tie vote. |
| 23-15-603. | Delivery of returns to Secretary of State. |
| 23-15-605. | Ascertainment of vote and declaration of results by Secretary of State; determination of tie vote. |
| 23-15-607. | Determination of election for judges of Supreme Court and Court of Appeals. |
| 23-15-609. | Determination of election in which city or county is entitled to separate representation in legislature. |
| 23-15-611. | Determination of municipal elections; show cause order may be issued for failure to transmit statement certifying names of persons elected. |
| 23-15-613. | Reporting of residual votes required for elections in which ballots are generated that are counted by hand or by OMR equipment or the tabulating mechanism of a DRE unit; certain reports required for elections that use voting devices that do not generate ballots. |

### § 23-15-591. Proclamation of results; sealing of ballot box.

When the votes have been completely and correctly counted and tallied by the poll managers they shall publicly proclaim the result of the election at their box and shall certify in duplicate a statement of the result, the certificate to be signed by the poll managers, one (1) of the certificates to be enclosed in the ballot box, and the other to be delivered to and to be kept by one (1) of the poll managers and to be inspected at any time by any voter who so requests. When the count of the votes and the tally of the votes have been completed, the poll managers shall lock and seal the ballot box, having first placed therein all ballots voted, all spoiled ballots and all unused ballots. There shall also be enclosed one (1) of the duplicate receipts given by the poll manager who received the blank ballots received for that box; and the total ballots voted, and the spoiled ballots, and the unused ballots must correspond in total with the duplicate receipt or else the failure thereof must be perfectly accounted for by a written statement, under oath of the poll managers, which statement must be enclosed in the ballot box. There shall also be enclosed in the box the tally list, the receipt book containing the signed names of the voters who voted; and the number of ballots voted must correspond with the number of names signed in the receipt book.

**HISTORY:**

Derived from 1972 Code § 23-3-19 [Codes, 1942, § 3167; Laws, 1935, ch. 19] repealed by Laws, 1986, ch. 495, § 333; § 23-5-147 [Codes, Hutchinson's 1848, ch. 7, art 5 (6); 1857, ch. 4, art 12; 1871, §§ 370, 371; 1880, § 136; 1892, § 3648; 1906, § 4155; Hemingway's 1917, § 6789; 1930, § 6238; 1942, § 3267; Laws, 1916, ch. 230; Laws, 1960, ch. 451; Laws, 1964, ch. 511, § 1] repealed by Laws, 1986, ch. 495, § 335; and § 23-5-167 [Codes, 1871, § 377; 1880, § 139; 1892, § 3670; 1906, § 4177; Hemingway's 1917, § 6811; 1930, § 6249; 1942, § 3278] repealed by Laws, 1986, ch. 495, § 335; en, Laws, 1986, ch. 495, § 187; Laws, 2017, ch. 441, § 120, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment inserted “poll” preceding “manager” and “managers,” substituted “enclosed” for “inclosed” and made minor stylistic changes throughout; deleted “and clerks” following “poll managers” in the first sentence; substituted “tally of the votes” for “tally thereof” in the second sentence; and substituted “book” for “booklet” twice in the last sentence.

## JUDICIAL DECISIONS

### ANALYSIS

1. Construction with other sections.
2. Special election warranted.
3.-5. [Reserved for future use.]
6. Under former Section 23-3-19.

**1. Construction with other sections.**

Trial court was correct in overruling the decision of the Jefferson Davis County Democratic Executive Committee, to conduct a new election for the Democratic nominee for Jefferson Davis County Chancery Clerk. The requirements to hold a new election under Miss. Code Ann. § 23-15-593 were not met, as § 23-15-593 authorized new elections for individual precincts if the requirements were met, not a new election county or district wide. To have held a new election county wide, the Committee would had to have determined that all precincts failed in material particulars to comply with the requirements of Miss. Code Ann. §§ 23-15-591 and 23-15-895 to such an extent that it was impossible to arrive at the will of the voters; there was no evidence that there were violations of Miss. Code Ann. §§ 23-15-591 and 23-15-895 and the committee exceeded its authority under Miss. Code Ann. § 23-15-593 in ordering a new election. Jefferson Davis County v. Davies, 912 So. 2d 837, 2005 Miss. LEXIS 212 (Miss. 2005).

**2. Special election warranted.**

Failure to secure ballot boxes under Miss. Code Ann. § 23-15-911 and the lack of the control over the boxes were substantial irregularities that warranted a special election because they were radical departures from Mississippi election law. Waters v. Gnemi, 907 So. 2d 307, 2005 Miss. LEXIS 321 (Miss. 2005).

**3.-5. [Reserved for future use.]**

**6. Under former Section 23-3-19.**

What constitutes a substantial failure to comply in material particulars with the requirements of the statutes as to primary elections, so as to require the throwing out of a box or calling a new election, depends upon the facts and circumstances in each particular case including the nature of the procedural requirements violated, the scope of the violations, and the ratio of legal votes to the total votes cast. Walker v. Smith, 213 Miss. 255, 57 So. 2d 166, 1952 Miss. LEXIS 360 (Miss. 1952).

Where there is a total departure from the mandatory provisions of the statute and it is not possible to ascertain the will of the electors because a substantial portion of the votes were void, a new election should be ordered for the purpose of ascertaining the voter's choice. May v. Layton, 213 Miss. 129, 55 So. 2d 460, 56 So. 2d 89, 1951 Miss. LEXIS 519, 1952 Miss. LEXIS 340 (Miss. 1951).

Where the special tribunal held that votes of more than one-third of the voters in primary election for office of supervisor, were held void for failure to comply with mandatory provisions of the statute, it was impossible for one to reasonably say that result arrived at by the special tribunal represented the will of the voters. May v. Layton, 213 Miss. 129, 55 So. 2d 460, 56 So. 2d 89, 1951 Miss. LEXIS 519, 1952 Miss. LEXIS 340 (Miss. 1951).

Allegations and proof by a contestant on a petition for judicial review of a primary election that a number of illegal votes were cast and counted to change the result of the election was sufficient, and he was not required to prove that enough of the illegal votes were actually cast for the contestee to give him the apparent, although not real, majority. Harris v. Stewart, 187 Miss. 489, 193 So. 339, 1940 Miss. LEXIS 226 (Miss. 1940).

**Cited in:** Jefferson Davis County v. Davies, 912 So. 2d 837, 2005 Miss. LEXIS 212 (Miss. 2005).

### RESEARCH REFERENCES

**Am. Jur.**
26 Am. Jur. 2d, Elections §§ 358 et seq.

## § 23-15-593. Irregularities in ballot box.

When the ballot box is opened and examined by the county executive committee in the case of a primary election, or county election commissioners in the case of other elections, and it is found that there have been failures in material particulars to comply with the requirements of Section 23-15-591 and Section 23-15-895 to such an extent that it is impossible to arrive at the will of the voters at such precinct, the entire box may be thrown out unless it be made to appear with reasonable certainty that the irregularities were not deliberately permitted or engaged in by the poll managers at that box, or by one (1) of them responsible for the wrong or wrongs, for the purpose of electing or defeating a certain candidate or candidates by manipulating the election or the returns thereof at that box in such manner as to have it thrown out; in which latter case the county executive committee, or the county election commission, as appropriate, shall conduct such hearing and make such determination in respect to the box as may appear lawfully just, subject to a judicial review of the matter as elsewhere provided by this chapter. Or the executive committee, or the election commission, or the court upon review, may order another election to be held at that box appointing new poll managers to hold the same.

**HISTORY:**
Derived from 1972 Code § 23-3-19 [Codes, 1942, § 3167; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, § 333]; en, Laws, 1986, ch. 495, § 188; Laws, 1987, ch. 499, § 7; Laws, 2017, ch. 441, § 121, eff from and after July 1, 2017.

**Editor's Notes —**
Laws of 1987, ch. 499, § 20, provides as follows:

"SECTION 20. If any section, paragraph, sentence, clause or phrase of this act is declared to be unconstitutional or void, or for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses or phrases shall be in no manner affected thereby but shall remain in full force and effect."

**Amendment Notes —**
The 2017 amendment inserted "poll" preceding "managers" twice; and made minor stylistic changes.

## JUDICIAL DECISIONS

**1. Revote.**

In a contested election for state representative, the trial court improperly issued a writ of mandamus requiring the election commission to certify the results and issued a writ of prohibition cancelling a re-vote as the commission's decision to schedule a re-vote based on voting irregularities was discretionary and not a ministerial act; and scheduling a re-vote was within its authority under Miss. Code Ann. § 23-15-593 where voters were not allowed to vote because they were given the wrong ballots and incorrect poll books were used, thereby precluding an interpretation of the will of the voters. In re Election for House of Representatives Dist. 71, 987 So. 2d 917, 2008 Miss. LEXIS 68 (Miss. 2008).

Trial court was correct in overruling the decision of the Jefferson Davis County Democratic Executive Committee, to conduct a new election for the Democratic nominee for Jefferson Davis County Chancery Clerk. The requirements to hold a new election under Miss. Code Ann. § 23-15-593 were not met, as § 23-15-593 authorized new elections for individual precincts if the requirements were met, not a new election county or district wide. To have held a new election county wide, the Committee would had to have determined that all precincts failed in material particulars to comply with the requirements of Miss. Code Ann. §§ 23-15-591 and 23-15-895 to such an extent that it was impossible to arrive at the will of the voters; there was no evidence that there were violations of Miss. Code Ann. §§ 23-15-591 and 23-15-895 and the committee exceeded its authority under Miss. Code Ann. § 23-15-593 in ordering a new election. Jefferson Davis County v. Davies, 912 So. 2d 837, 2005 Miss. LEXIS 212 (Miss. 2005).

Problems in the state party primary election for a state house seat were not "technical" because an entire sub-precinct was not allowed to vote; thus, the trial court appropriately ordered a revote in the excluded areas in complete accordance with procedures mandated by the Legislature in Miss. Code Ann. § 23-15-593. Barbour v. Gunn, 890 So. 2d 843, 2004 Miss. LEXIS 338 (Miss. 2004).

## OPINIONS OF THE ATTORNEY GENERAL

Statute does not contemplate or authorize setting up new period in which to allow additional candidates to qualify when ballot box or boxes are "thrown out" in election. 1991 Miss. Op. Att'y Gen. 253.

## RESEARCH REFERENCES

**ALR.**

Effect of irregularities or defects in primary petitions-State cases. 14 A.L.R.6th 543.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 342-345, 347-349, 358-362, 364, 373, 379.

**CJS.**

29 C.J.S., Elections § 575.

## § 23-15-595. Procedure for sealing of ballot box; reopening and resealing.

The box containing the ballots and other records required by this chapter shall, immediately after the ballots have been counted, be delivered by one (1) of the poll managers to the clerk of the circuit court of the county and the clerk shall, in the presence of the poll manager making delivery of the box, place upon the lock of such box a tamper-evident seal. The seals shall be numbered consecutively to the number of ballot boxes used in the election in the county, and the clerk shall keep in a place separate from such boxes a record of the number of the seal of each separate box in the county. The board of supervisors of the county shall pay the cost of providing the seals. Upon demand of the chair of the county executive committee in the case of primary elections, or the county election commissioner in the case of other elections, the boxes and their contents shall be delivered to the county executive committee, or the county election commission, as appropriate, and after such committee or commission, as appropriate, has finished the work of tabulating returns and counting ballots as required by law, the committee or commission, as appropriate, shall return all papers and ballots to the box of the precinct where the election was held, and it shall make redelivery of the boxes and their contents to the circuit clerk who shall reseal the boxes. Upon every occasion the boxes shall be reopened and each resealing shall be done as provided in this chapter.

**HISTORY:**

Derived from 1972 Code § 23-3-21 [Codes, 1942, § 3168; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495 § 333]; en, Laws, 1986, ch. 495, § 189; Laws, 2017, ch. 441, § 122, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment rewrote the first sentence, which read: "The box containing the ballots and other records required by this chapter shall, as soon as practical after the ballots have been counted, be delivered by one (1) of the precinct managers to the clerk of the circuit court of the county and said clerk shall, in the presence of the manager making delivery of the box, place upon the lock of such box a metal seal similar to the seal commonly used in sealing the doors of railroad freight cars"; and made gender neutral and minor stylistic changes.

## JUDICIAL DECISIONS

### ANALYSIS

1.-4. [Reserved for future use.]
5. Special election warranted.
6. Under former Section 23-3-21.

**1.-4. [Reserved for future use.]**

**5. Special election warranted.**

Failure to secure ballot boxes under Miss. Code Ann. § 23-15-911 and the lack of control over the boxes were substantial irregularities that warranted a special election because they were radical departures from Mississippi election law. Waters v. Gnemi, 907 So. 2d 307, 2005 Miss. LEXIS 321 (Miss. 2005).

**6. Under former Section 23-3-21.**

Evidence that after counting of ballots, and before recount thereof, circuit clerk failed to seal the ballot boxes in question and to keep a record of the seals as required by statute, and that such boxes and their contents were tampered with, warranted affirmance of order of special tribunal, unanimously entered, adjudging elections valid as against contestant who received a majority on recount. Allen v. Funchess, 195 Miss. 486, 15 So. 2d 343, 1943 Miss. LEXIS 143 (Miss. 1943).

## RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 358 et seq.

## § 23-15-597. Canvass of returns and announcement of results by executive committee.

(1) The county executive committee shall meet no later than one (1) week from the day following each primary election to receive and canvass the returns that must be made within the time fixed by law for returns of general elections and declare the result, and announce the name of the nominees for county and county district offices and the names of those candidates to be submitted to the second primary. The vote for state, state district offices and legislative offices shall be tabulated by precincts and certified to and returned to the State Executive Committee, such returns to be mailed by registered

letter or any safe mode of transmission within thirty-six (36) hours after the returns are canvassed and the result ascertained. The State Executive Committee shall meet one (1) week from the day following the first primary election held for state, state district offices and legislative offices, and shall proceed to canvass the returns and to declare the result, and announce the names of those nominated for the different offices in the first primary and the names of those candidates whose names are to be submitted to the second primary election. The State Executive Committee shall also meet one (1) week from the day on which the second primary election was held and receive and canvass the returns for state and district offices, if any, and legislative offices, if any, voted on in the second primary. An exact and full duplicate of all tabulations by precincts as certified under this section shall be filed with the circuit clerk of the county who shall safely preserve the same in his or her office.

(2)(a) If it is eligible under Section 23-15-266, the county executive committee may enter into a written agreement with the circuit clerk or the county election commission authorizing the circuit clerk or the county election commission to perform any of the duties required of the county executive committee pursuant to this section. Any agreement entered into pursuant to this subsection shall be signed by the chair of the county executive committee and the circuit clerk or the chair of the county election commission, as appropriate. The county executive committee shall notify the State Executive Committee and the Secretary of State of the existence of the agreement.

(b) If it is eligible under Section 23-15-266, the municipal executive committee may enter into a written agreement with the municipal clerk or the municipal election commission authorizing the municipal clerk or the municipal election commission to perform any of the duties required of the municipal executive committee pursuant to this section. Any agreement entered into pursuant to this subsection shall be signed by the chair of the municipal executive committee and the municipal clerk or the chair of the municipal election commission, as appropriate. The municipal executive committee shall notify the State Executive Committee and the Secretary of State of the existence of the agreement.

**HISTORY:**

Derived from 1942 Code § 3142 [Codes, 1906, § 3705; Hemingway's 1917, § 6397; 1930, § 5895; repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; en, Laws, 1986, ch. 495, § 190; Laws, 2001, ch. 523, § 7; Laws, 2010, ch. 320, § 3; Laws, 2017, ch. 441, § 123, eff from and after July 1, 2017.

**Editor's Notes —**

The United States Attorney General, by letter dated June 20, 2001, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2001, ch. 523.

By letter dated July 15, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 320, § 3.

**Amendment Notes —**

The 2017 amendment, in (1), substituted "meet no later than one (1) week from the day following each primary election to receive" for "meet on the first or second day after each primary election, shall receive," and substituted "meet one (1) week" for "meet a week" twice; and made gender neutral and minor stylistic changes throughout.

**Cross References —**

Conditions under which executive committee is authorized to enter into agreements regarding conduct of elections, see § 23-15-266.

## JUDICIAL DECISIONS

**1. In general.**

Trial court was correct in overruling the decision of the Jefferson Davis County Democratic Executive Committee, to conduct a new election for the Democratic nominee for Jefferson Davis County Chancery Clerk. The requirements to hold a new election under Miss. Code Ann. § 23-15-593 were not met, as § 23-15-593 authorized new elections for individual precincts if the requirements were met, not a new election county or district wide. To have held a new election county wide, the Committee would had to have determined that all precincts failed in material particulars to comply with the requirements of Miss. Code Ann. §§ 23-15-591 and 23-15-895 to such an extent that it was impossible to arrive at the will of the voters; there was no evidence that there were violations of Miss. Code Ann. §§ 23-15-591 and 23-15-895 and the committee exceeded its authority under Miss. Code Ann. § 23-15-593 in ordering a new election. Jefferson Davis County v. Davies, 912 So. 2d 837, 2005 Miss. LEXIS 212 (Miss. 2005).

## RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 365-370.

## § 23-15-599. Tabulated statement of party vote.

(1)(a) Within ten (10) days after the first primary election and within ten (10) days after the second primary election, if any, the Chairman of the State Executive Committee shall transmit to the Secretary of State a tabulated statement of the party vote cast in each county and precinct in each county in each state and state district election, and each legislative election for districts consisting of more than one (1) county or parts of more than one (1) county. The statement shall be transmitted by the State Executive Committee on such forms and by such methods as may be required by rules and regulations promulgated by the Secretary of State. The statement shall be filed by the Secretary of State and preserved among the records of his office.

(b) The statement provided for in paragraph (a) of this subsection shall contain a certification signed and dated by the Chairman of the State Executive Committee, which shall read as follows:

"I ________________, Chairman of the ____________ Party State Executive Committee, do hereby certify that, on a majority vote of the ____________ Party State Executive Committee, these vote totals for each county and for each candidate are the official vote totals for the election reflected therein."

(2)(a) Within ten (10) days after the first primary election and within ten (10) days after the second primary election, if any, the county executive committee shall transmit to the Secretary of State a tabulated statement of the party vote cast in their county and each precinct in their county in each election for county and county district office and each election for legislative office for districts containing one (1) county or less. The statement shall be transmitted by the county executive committee on such forms and by such methods as may be required by rules and regulations promulgated by the Secretary of State. The statement shall be filed by the Secretary of State and preserved among the records of his office.

(b) The statement provided for in paragraph (a) of this subsection shall contain a certification signed and dated by the majority of the members of the county executive committee, which shall read as follows:

"We, the undersigned members of the county executive committee, do hereby certify that these vote totals for each candidate are the official vote totals for the election reflected therein."

**HISTORY:**

Derived from 1942 Code § 3146 [Codes, 1905, § 3724; Hemingway's 1917, § 9415; 1930, § 5899; repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; en, Laws, 1986, ch. 495, § 191; Laws, 2002, ch. 534, § 2, eff July 29, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

The United States Attorney General, by letter dated July 29, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2002, ch. 534.

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 358 et seq.

## § 23-15-600. Forms for reporting election returns.

All forms to be prescribed by the Secretary of State for the reporting of election returns hereunder shall be either hard copy forms on which precincts are listed horizontally and candidates are listed vertically and/or a web-based system in which these forms, or forms similar to them, are made available to counties electronically.

**HISTORY:**

Laws, 2002, ch. 534, § 8, eff July 29, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section).

**Editor's Notes —**

The United States Attorney General, by letter dated July 29, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the addition of this section by Laws of 2002, ch. 534.

## § 23-15-601. Canvass of returns and declaration of results by election commissioners; determination of tie vote.

(1) When the result of the election shall have been ascertained by the poll managers they, or one (1) of their number, or some fit person designated by them, shall, on the night of the election, deliver to the election commissioners, at the courthouse, a statement of the whole number of votes given for each person and for what office; and the election commissioners shall canvass the returns, ascertain and declare the result, and, within ten (10) days after the day of the election, shall deliver a certificate of the election to the person having the greatest number of votes for representative in the Legislature of

districts composed of one (1) county or less, or other county office, board of supervisors, justice court judge and constable. If it appears that two (2) or more candidates for Representative of the county, or part of the county, or for any county office, board of supervisors, justice court judge or constable standing highest on the list, and not elected, have an equal number of votes, the interested candidates shall appear before the election commissioners within two (2) days after the canvass and the tie shall be determined by a toss of a coin or by lot fairly and publicly drawn, and a certificate of election shall be given accordingly. The foregoing provisions shall apply to Senators, if the county be a senatorial district.

(2) The election commissioners shall transmit to the Secretary of State, on such forms and by such methods as may be required by rules and regulations promulgated by the Secretary of State, a statement of the total number of votes cast in the county for each candidate for each office and the total number of votes cast for such candidates in each precinct in the district in which the candidate ran.

**HISTORY:**

Derived from 1972 Code § 23-5-169 [Codes, Hutchinson's 1848, ch. 7, art 5 (9); 1857, ch. 4, art 13; 1871, § 377; 1880, § 138; 1892, § 3671; 1906, § 4178; Hemingway's 1917, § 6812; 1930, § 6250; 1942, § 3279; Laws, 1970, ch. 506, § 27; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 192; Laws, 2002, ch. 534, § 3; Laws, 2017, ch. 441, § 124, eff from and after July 1, 2017.

**Editor's Notes —**

The United States Attorney General, by letter dated July 29, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2002, ch. 534.

**Amendment Notes —**

The 2017 amendment, in (1), in the first sentence, inserted "poll" near the beginning, substituted "shall, on the night of the election" for "shall, by noon of the second day after the election," substituted "election commissioners" for "commissioners of election" twice, and made a gender neutral change, and rewrote the second sentence, which read: "If it appears that two (2) or more candidates for Representative of the county, or part of the county, or for any county office, board of supervisors, justice court judge or constable standing highest on the list, and not elected, have an equal number of votes, the election shall be decided by lot fairly and publicly drawn by the commissioners, with the aid of two (2) or more respectable electors of the county, and a certificate of election shall be given accordingly"; and substituted "election commissioners" for "commissioners of election" in (2).

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2.-5. [Reserved for future use.]
6. Under former Section 23-5-169.

**1. In general.**

In a contested election for state representative, the trial court improperly issued a writ of mandamus requiring the election commission to certify the results and issued a writ of prohibition cancelling a re-vote as the commission's decision to schedule a re-vote based on voting irregularities was discretionary and not a ministerial act; and scheduling a re-vote was within its authority under Miss. Code Ann. § 23-15-593 where voters were not allowed to vote because they were given the wrong ballots and incorrect poll books were used, thereby precluding an interpretation of the will of the voters. In re Election for House of Representatives Dist. 71, 987 So. 2d 917, 2008 Miss. LEXIS 68 (Miss. 2008).

Evidence supported determination of county democratic executive committee and election commission that voter's signature on absentee ballot did not match signature on ballot envelope, and therefore, court's order to committee to reconvene, open, and count such absentee ballot constituted reversible error; several persons involved in vote counting process determined that signatures did not match, voter's testimony was unclear, and members of committee testified that candidate stated that voter's daughter, rather than voter, signed ballot and envelope. Pegram v. Bailey, 694 So. 2d 664 (Miss. 1997).

Election commission does not have the authority to open ballots certified by election managers as rejected or challenged, and commission cannot override or review decision of election manager who marked ballot as rejected or challenged; duty of commission is merely to canvass sealed ballots to determine if requirements have been met. Misso v. Oliver, 666 So. 2d 1366, 1996 Miss. LEXIS 4 (Miss. 1996).

Only power conferred, and only duty required of election commission, in relation to the canvass of votes, should be to count the votes, based upon returns as made by election managers, and to give certificates to those receiving majority of the votes; election commission should not go beyond or behind the returns, and reject votes, or accept votes previously rejected, or otherwise inquire into validity of conduct of election; election commission has no judicial discretion as to validity of rejected or contested votes. Misso v. Oliver, 666 So. 2d 1366, 1996 Miss. LEXIS 4 (Miss. 1996).

Although a court could, if necessary, compel by mandamus an election commission to perform its statutory duty upon its failure to do so, or prohibit it by way of injunction or writ of prohibition from exceeding its statutory authority in some respect, use of an extraordinary writ cannot be extended to actually telling an election commission what action to take. Thus, a TRO should not have been entered to stop an election commission from performing its statutory duties under §§ 23-15-601 and 23-15-603. In re Wilbourn, 590 So. 2d 1381, 1991 Miss. LEXIS 835 (Miss. 1991).

**2.-5. [Reserved for future use.]**

**6. Under former Section 23-5-169.**

It is the duty under Code 1942, § 3279 of the county election commissioners to canvass the returns of the statements of the election managers as to the whole number of votes and to ascertain the results of the election. Thornton v. Wayne County Election Com., 272 So. 2d 298, 1973 Miss. LEXIS 1528 (Miss. 1973).

Where the result of a second primary called by a political party ended in a tie for two candidates for a municipal office the election of one of such candidates after nomination by a third primary was void. Omar v. West, 186 Miss. 136, 188 So. 917, 1939 Miss. LEXIS 196 (Miss. 1939).

A candidate for municipal office, who withdrew from the party nomination after a second primary resulted in a tie between him and another and a third primary was called in violation of law, and who thereafter presented a petition signed by eighty-eight qualified electors of the town to have his name printed on the official ballot, was entitled to have his name printed on the official ballot as a candidate for the office in the general election, his participation in the first and second primaries being no bar to that course. Omar v. West, 186 Miss. 136, 188 So. 917, 1939 Miss. LEXIS 196 (Miss. 1939).

Supreme Court on appeal from judgment improperly refusing mandamus to compel commissioners to reassemble and canvass and return the ballots will not remand the case but will enter judgment requiring them to do so. State ex rel. Hudson v. Pigott, 97 Miss. 599, 54 So. 257 (Miss. 1910).

The commissioners of election may exclude from their count all illegal ballots which were counted by the managers. Oglesby v. Sigman, 58 Miss. 502, 1880 Miss. LEXIS 149 (Miss. 1882).

## OPINIONS OF THE ATTORNEY GENERAL

So long as members of a county election commission had no knowledge of or were not a participant in any illegal or criminal activities associated with a general election, they will not be liable civilly or criminally for proceeding with their duty to complete the canvass and to certify the election result in accordance with Section 23-15-601 and transmitting the result to the secretary of state in accordance with Section 23-15-603. 2006 Miss. Op. Att'y Gen. 612.

## RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 371, 372.

## § 23-15-603. Delivery of returns to Secretary of State.

(1) The election commissioners shall, within ten (10) days after the general election, transmit to the Secretary of State, to be filed in his or her office, a statement of the whole number of votes given in their county and the whole number of votes given in each precinct in their county, for each candidate for any office at the election; but the returns of every election for Governor, Lieutenant Governor, Secretary of State, Attorney General, Auditor of Public Accounts, State Treasurer, Commissioner of Insurance and other state officers, shall each be made out separately, sealed up together and transmitted to the seat of government, directed to the Secretary of State, and endorsed the "VOTE FOR STATE OFFICERS," to be delivered by the Secretary of State to the Speaker of the House of Representatives at the next ensuing session of the Legislature. In addition to the other information required pursuant to this subsection, the returns for state officers shall contain a statement of the whole number of votes given in each House of Representative district or portion thereof for each candidate for state office at the election.

(2) Constitutional amendments shall be voted for at the time fixed by the concurrent resolution. The election, whether held separately or with other elections, shall be conducted, in all respects, as required for elections generally. The election commissioners shall, within ten (10) days after the election, transmit to the Secretary of State a statement of the whole number of votes given in their county and the whole number of votes given in each precinct in their county for or against constitutional amendments.

(3) The statements certified by the election commissioners and transmitted to the Secretary of State, as required by this section, shall be tabulated by the Secretary of State and submitted to each branch of the Legislature, at the session next ensuing. Certified county vote totals shall represent the final results of the election.

(4) The statements required by this section shall contain a certification, signed and dated by a majority of the election commissioners, which shall read as follows:

"We, the undersigned election commissioners, do hereby certify that this statement of the whole number of votes contains the official vote for the election reflected therein."

(5) The statements required by this section shall be transmitted to the Secretary of State on such forms and by such methods as may be required by rules and regulations promulgated by the Secretary of State.

**HISTORY:**

Derived from 1972 Code § 23-5-171 [Codes, Hutchinson's 1848, ch. 7, art 5 (8); 1857, ch. 4, art 14; 1871, § 378; 1880, § 140; 1892, § 3672; 1906, § 4179; Hemingway's 1917, § 6813; 1930, § 6251; 1942, § 3280; Laws, 1970, ch. 506, § 28; Laws, 1978, ch. 458, § 17; Laws, 1982, Ex Sess, ch. 17, § 20; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 193; Laws, 2002, ch. 534, § 4; Laws, 2017, ch. 441, § 125, eff from and after July 1, 2017.

**Editor's Notes —**

Section 7-7-2, as added by Laws of 1984, chapter 488, § 90, and amended by Laws of 1985, chapter 455, § 14, Laws of 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor," and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

The United States Attorney General, by letter dated July 29, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2002, ch. 534.

**Amendment Notes —**

The 2017 amendment substituted "election commissioners" for "commissioners of election" four times; and made a gender neutral change.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2.-5. [Reserved for future use.]
6. Under former Section 23-5-171.

**1. In general.**

In a contested election for state representative, the trial court improperly issued a writ of mandamus requiring the election commission to certify the results and issued a writ of prohibition cancelling a re-vote as the commission's decision to schedule a re-vote based on voting irregularities was discretionary and not a ministerial act; and scheduling a re-vote was within its authority under Miss. Code Ann. § 23-15-593 where voters were not allowed to vote because they were given the wrong ballots and incorrect poll books were used, thereby precluding an interpretation of the will of the voters. In re Election for House of Representatives Dist. 71, 987 So. 2d 917, 2008 Miss. LEXIS 68 (Miss. 2008).

Although a court could, if necessary, compel by mandamus an election commission to perform its statutory duty upon its failure to do so, or prohibit it by way of injunction or writ of prohibition from exceeding its statutory authority in some respect, use of an extraordinary writ cannot be extended to actually telling an election commission what action to take. Thus, a TRO should not have been entered to stop an election commission from performing its statutory duties under §§ 23-15-601 and 23-15-603. In re Wilbourn, 590 So. 2d 1381, 1991 Miss. LEXIS 835 (Miss. 1991).

**2.-5. [Reserved for future use.]**

**6. Under former Section 23-5-171.**

A court is without power to issue a writ of prohibition to restrain the Secretary of State, on the ground that a constitutional amendment has not been validly adopted, from performing the duties prescribed by this section [Code 1942, § 3280]. Barnes v. Ladner, 241 Miss. 606, 131 So. 2d 458, 1961 Miss. LEXIS 380 (Miss. 1961).

When the commissioners have complied with this law they cannot be compelled by mandamus to recanvass the return. Oglesby v. Sigman, 58 Miss. 502, 1880 Miss. LEXIS 149 (Miss. 1882).

## OPINIONS OF THE ATTORNEY GENERAL

So long as members of a county election commission had no knowledge of or were not a participant in any illegal or criminal activities associated with a general election, they will not be liable civilly or criminally for proceeding with their duty to complete the canvass and to certify the election result in accordance with Section 23-15-601 and transmitting the result to the secretary of state in accordance with Section 23-15-603. 2006 Miss. Op. Att'y Gen. 612.

## RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 365-372.

**CJS.**

29 C.J.S., Elections § 544.

### § 23-15-605. Ascertainment of vote and declaration of results by Secretary of State; determination of tie vote.

The Secretary of State, immediately after receiving the returns of an election, not longer than thirty (30) days after the election, shall sum up the whole number of votes given for each candidate other than candidates for state offices, legislative offices composed of one (1) county or less, county offices and county district offices, according to the statements of the votes certified to him or her and ascertain the person or persons having the largest number of votes for each office, and declare such person or persons to be duly elected; and thereupon all persons chosen to any office at the election shall be commissioned by the Governor; but if it appears that two (2) or more candidates for any district office where the district is composed of two (2) or more counties, standing highest on the list, and not elected, have an equal number of votes, the election shall be decided between the candidates having an equal number of votes by each candidate individually drawing one (1) of the two (2) sealed containers from an opaque bag, under the direction of the Governor and Secretary of State. The containers shall consist of a straw of conspicuous length, and the candidate drawing the container with the longer of the two (2) straws shall be declared the winner.

**HISTORY:**

Derived from 1972 Code § 23-5-173 [Codes, 1857, ch. 4, art 15; 1871, § 378; 1880, § 141; 1892, § 3673; 1906, § 4180; Hemingway's 1917, § 6814; 1930, § 6252; 1942, § 3281; Laws, 1970, ch. 506, § 29; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 194; Laws, 2002, ch. 534, § 5; Laws, 2017, ch. 441, § 126, eff from and after July 1, 2017.

**Editor's Notes —**

The United States Attorney General, by letter dated July 29, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2002, ch. 534.

**Amendment Notes —**

The 2017 amendment, in the first sentence, substituted "votes by each candidate individually drawing one (1) of the two (2) sealed containers from an opaque bag, under" for "votes by lot, fairly and publicly drawn, under" at the end, and made a gender neutral change; and added the last sentence.

## JUDICIAL DECISIONS

### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-15-605.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-15-605.**

When the secretary of state has complied with this law, and the governor has commissioned the person certified to be elected, a mandamus will not lie to compel a second summing up of the votes. Myers v. Chalmers, 60 Miss. 772, 1883 Miss. LEXIS 12 (Miss. 1883).

## RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 371, 372, 380.

### § 23-15-607. Determination of election for judges of Supreme Court and Court of Appeals.

(1) The election commissioners shall, within ten (10) days after an election for judges of the Supreme Court or Court of Appeals, transmit to the Secretary of State, to be filed in his or her office, a statement of the whole number of votes given in their county, and the whole number of votes given in each precinct in their county, for each candidate for the Office of Judge of the Supreme Court or Court of Appeals, and the Secretary of State shall immediately notify each member of the State Board of Election Commissioners in writing to assemble at his or her office on a day to be fixed by him or her, to be within ten (10) days after the receipt by him or her of such statement, and when assembled pursuant to such notice the State Board of Election Commissioners shall sum up the whole number of votes given for each candidate for judge of the Supreme Court or Court of Appeals according to the total number of votes in each county for each candidate as certified to the Secretary of State, ascertain the person or persons to be elected; and thereupon all persons chosen to such office at the election shall be commissioned by the Governor; but if it appears that two (2) or more candidates for judge of the Supreme Court or Court of Appeals standing highest on the list, and not elected, have an equal number of votes, the election shall be decided between the candidates having an equal number of votes by each candidate individually drawing one (1) of the two (2) sealed containers from an opaque bag, under the direction of the Governor and Secretary of State. The containers shall consist of a straw of conspicuous length, and the candidate drawing the container with the longer of the two (2) straws shall be declared the winner.

(2) The statements required by this section shall contain a certification, signed and dated by a majority of the election commissioners, which shall read as follows:

"We, the undersigned election commissioners, do hereby certify that this statement of the whole number of votes contain the official vote for the election reflected therein."

(3) The statements required by this section shall be transmitted to the Secretary of State on such forms and by such methods as may be required by rules and regulations promulgated by the Secretary of State.

**HISTORY:**

Derived from 1972 Code § 23-5-245 [Codes, Hemingway's 1917, § 6852; 1930, § 6286; 1942, § 3315; Laws, 1916, ch. 161; Laws, 1970, ch. 506, § 32; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 195; Laws, 1993, ch. 518, § 25; Laws, 2002, ch. 534, § 6; Laws, 2017, ch. 441, § 127, eff from and after July 1, 2017.

**Editor's Notes —**

Laws of 1993, ch. 518, § 45, provides as follows:

"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Laws of 1993, ch. 518.

The United States Attorney General, by letter dated July 29, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2002, ch. 534.

**Amendment Notes —**

The 2017 amendment substituted "election commissioners" for "commissioners of election" once in (1) and twice in (2); and in (1), substituted "votes by each candidate individually drawing one (1) of the two (2) sealed containers from an opaque bag, under the direction of the Governor and Secretary of State" for "votes by lots, fairly and publicly drawn under the direction of the State Board of Election Commissioners" at the end of the first sentence, added the last sentence, and made gender neutral changes.

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 371, 372.

## § 23-15-609. Determination of election in which city or county is entitled to separate representation in legislature.

When a city or part of a county is entitled to separate representation in the Legislature, the election commissioners shall prepare for the election, and shall receive and canvass the returns, declare the result, and transmit it to the Secretary of State, and act in all respects as in other elections.

**HISTORY:**

Derived from 1972 Code § 23-5-175 [Codes, Hutchinson's 1848, ch. 7, art 5 (16); 1857, ch. 4, art 5; 1880, § 131; 1892, § 3641: 1906, § 4148; Hemingway's 1917, § 6782; 1930, § 6253; 1942, § 3282; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 196; Laws, 2017, ch. 441, § 128, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment substituted "election commissioners" for "commissioners of election."

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 358 et seq.

## § 23-15-611. Determination of municipal elections; show cause order may be issued for failure to transmit statement certifying names of persons elected.

(1) In municipal elections, poll managers shall, immediately upon the closing of the polls, count the ballots and ascertain the number of votes cast in each voting precinct for each of the candidates or ballot measures and make a return thereof to the municipal election commissioners. On the day following the election, the election commissioners shall canvass the returns so received from all voting precincts and shall, within six (6) days after the election, deliver to each person receiving the highest number of votes a certificate of election. If it shall appear that any two (2) or more of the candidates receiving the highest number of votes shall have received an equal number of votes, the election shall be decided by a toss of a coin or by lot fairly and publicly drawn under the direction of the election commissioners.

(2)(a) Within six (6) days after any election, the municipal election commissioners shall transmit a statement to the Secretary of State certifying the name or names of the person or persons elected, and such person or persons shall be issued commissions by the Governor. The statement shall also include vote totals for each candidate for each office and vote totals for and against ballot measures, if any, including the vote totals for each candidate and ballot measure in each precinct in the municipality.

(b) The statements required by this subsection (2) shall contain a certification, signed and dated by a majority of the municipal election commissioners, which shall read as follows:

"We, the undersigned municipal election commissioners, do hereby certify that this statement contains the official vote for the election reflected therein."

(c) The statements required by this subsection (2) shall be transmitted to the Secretary of State on such forms and by such methods as may be required by rules and regulations promulgated by the Secretary of State.

(d) If the statement certifying the names of the persons elected is not transmitted to the Secretary of State as required by this subsection (2), the Secretary of State may issue a show cause order directing the municipal election commissioners to provide to the Secretary of State written response containing the reasons for their failure to transmit the statement. The municipal election commissioners shall file their response to the show cause order with the Secretary of State within five (5) working days after the issuance of the show cause order. If the statement certifying the names of the persons elected is not transmitted to the Secretary of State within five (5) working days after the issuance of the show cause order, the Secretary of State may petition a court of competent jurisdiction to compel the municipal election commissioners to comply with this subsection (2). If the statement certifying the names of the persons elected is received by the Secretary of State within five (5) days after the issuance of the show cause order, a response to the show cause order shall not be required.

**HISTORY:**

Derived from 1972 Code § 21-11-13 [Codes, 1892, § 3032; 1906, § 3437; Hemingway's 1917, § 5997; 1930, § 2599; 1942, § 3374-65; Laws, 1950, ch. 491, § 65; repealed by Laws, 1986, ch. 495, § 329]; en, Laws, 1986, ch. 495, § 197; Laws, 2002, ch. 534, § 7; Laws, 2010, ch. 400, § 1; Laws, 2017, ch. 441, § 129, eff from and after July 1, 2017.

**Editor's Notes —**

The United States Attorney General, by letter dated July 29, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2002, ch. 534.

By letter dated July 15, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 400, § 1.

**Amendment Notes —**

The 2017 amendment, in (1), substituted "poll managers" for "managers of elections" and "six (6) days" for "five (5) days," and rewrote the last sentence, which read: "If it shall appear that any two (2) or more of the candidates receiving the highest number of votes shall have received an equal number of votes, the election shall be decided by lot, fairly and publicly drawn by the election commissioners with the aid of two (2) or more qualified electors of the municipality"; in (2), substituted "six (6) days" for "five (5) days" in (a), and inserted "(2)" following "this subsection" once each in (b) and (c) and twice in (d); and made minor stylistic changes.

RESEARCH REFERENCES

**Am. Jur.**
26 Am. Jur. 2d, Elections §§ 371, 372.

**CJS.**
29 C.J.S., Elections §§ 375-395, 400.

## § 23-15-613. Reporting of residual votes required for elections in which ballots are generated that are counted by hand or by OMR equipment or the tabulating mechanism of a DRE unit; certain reports required for elections that use voting devices that do not generate ballots.

(1) As used in this section "residual votes" means overvotes, undervotes and any other vote not counted for any reason.

(2) For every election, election commissions and county and municipal executive committees shall report to the Secretary of State residual vote information; however, if the voting devices utilized in the election do not produce a ballot, other information shall be reported as required in this section.

(3) For every election, election commissions and county and municipal executive committees responsible for the conduct of elections in which ballots are generated that are counted by hand or by OMR equipment or the tabulating mechanism of a DRE unit shall report to the Secretary of State all residual votes for all candidates and ballot measures in the elections for which they are responsible for conducting. The residual vote reports shall:

(a) Be received by the Secretary of State no later than December 15 of the year in which the election is held;

(b) Include any suggested explanation or suspected cause of the residual votes;

(c) Include a copy of a voided official ballot for the election as such ballot appeared to voters at the election and copies of voided affidavit and absentee ballots if they are different from the official ballot;

(d) Include the total voter turnout for each election to be determined by totaling the number of persons signing the receipt book at each precinct, absentee voters and persons who voted by affidavit ballot and persons whose ballots were challenged and rejected; and

(e) Include a copy of any printed voting instructions given or visible to voters in the election and a description of any verbal instructions and any other evidence of voter education that was used in the election.

(4) For every election, election commissions and county and municipal executive committees responsible for the conduct of election in which voting devices are used that do not generate ballots that are counted by hand or by OMR equipment or the tabulating mechanism of a DRE unit, shall file a report with the Secretary of State which shall:

(a) Be received by the Secretary of State no later than December 15 of the year in which the election is held;

(b) Include the total voter turnout for each election to be determined by totaling the number of persons signing the receipt book at each precinct, absentee voters and persons who voted by affidavit ballot and persons whose ballots were challenged and rejected;

(c) Include in the report any anecdotal information obtained concerning voter problems with the voting equipment or ballot layout;

(d) Include in the report any suggested explanation or suspected cause of any difference in the amount of total voter turnout and the number of counted votes for candidates for various offices; and

(e) Include a copy of any printed voting instructions given or visible to voters in the election and a description of any verbal instructions and any other evidence of voter education that was used in the election.

(5) Not later than January 31 of the year following the election, the Secretary of State shall submit a report to the Governor, Lieutenant Governor and Speaker of the House of Representatives analyzing the reports required to be filed pursuant to this section. The analysis shall include the following:

(a) The performance of each voting device type used in the election;

(b) Any problems with voter or poll worker instructions or ballot design and layout that have been identified as a result of analyzing the reports received;

(c) Recommendations for reducing the number of residual votes reported; and

(d) Such other information as the Secretary of State deems beneficial.

(6) The reports required pursuant to this section shall be in such form as may be required by rules and regulations promulgated by the Secretary of State.

**HISTORY:**

Laws, 2002, ch. 534, § 1; Laws, 2017, ch. 441, § 130, eff from and after July 1, 2017.

**Editor's Notes —**

The United States Attorney General, by letter dated July 29, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the addition of this section by Laws of 2002, ch. 534.

**Amendment Notes —**

The 2017 amendment substituted "OMR equipment or the tabulating mechanism of a DRE unit" for "an electronic or automatic tabulating device" in (3) and "electronic or automatic tabulating devices" in (4); and made minor stylistic changes.

## ARTICLE 19.

## ABSENTEE BALLOTS.

Subarticle A. Absentee Balloting Procedures Law. .......... 23-15-621
Subarticle B. Armed Services Absentee Voting Law. .......... 23-15-671
Subarticle C. Absentee Voter Law. .......... 23-15-711
Subarticle D. Provision Applicable to Presidential Election. .......... 23-15-731
Subarticle E. General Provisions. .......... 23-15-751

## SUBARTICLE A.

## ABSENTEE BALLOTING PROCEDURES LAW.

Sec.
23-15-621. Short title.

Sec.
23-15-623. Application to absentee ballots authorized in Subarticles B, C, and D.
23-15-625. Duties of registrar relating to the provision and disbursement of absentee voting applications; request for application by person other than elector seeking to vote by absentee ballot; solicitation of absentee ballot applications for persons staying in skilled nursing facility prohibited; exceptions; maintenance of list of absentee voters; public access to list; placement of absentee ballots in ballot boxes; authority to mail applications to qualified electors; use of Statewide Election Management System.
23-15-627. Distribution of absentee ballot application by registrar; request for absentee ballot application by certain persons on behalf of an elector; form of application.
23-15-629. Applications by persons who are permanently physically disabled; listing of qualified electors; distribution of ballots.
23-15-631. Instructions to absent electors; instructions as constituting substantive law.
23-15-633. Signatures of elector and attesting witness across flap of envelope.
23-15-635. Form of elector's certificate, attesting witness certification, and voter assistance certificate where county registrar is not attesting witness and voter is not absent voter as defined in the Armed Forces Absentee Voting Law.
23-15-637. Timely casting of ballots.
23-15-639. Examination of absentee ballots at close of polls; counting of ballots.
23-15-641. Grounds for rejection of ballots; procedure.
23-15-643. Examination of affidavits; challenges.
23-15-645. Preservation of materials relative to absentee voters; return of materials to registrar.
23-15-647. Disposition of absentee ballots received after applicable deadlines.
23-15-649. Preparation and printing of absentee voter ballots.
23-15-651. Announcement of results of vote by absentee balloting.
23-15-653. Hours of registrars' offices on two Saturdays prior to each election.
23-15-657. Requests for absentee ballots by telephone.

## § 23-15-621. Short title.

The title of Sections 23-15-621 through 23-15-653 of this chapter shall be the Absentee Balloting Procedures Law.

**HISTORY:**

Derived from 1972 Code § 23-9-401 [Codes, 1942, § 3203-401; Laws, 1972, ch. 490, § 401; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 198, eff from and after January 1, 1987.

## § 23-15-623. Application to absentee ballots authorized in Subarticles B, C, and D.

All absentee ballots as authorized in Sections 23-15-671 through 23-15-697, in Sections 23-15-711 through 23-15-721, and Sections 23-15-731 and 23-15-733, shall be handled as provided in Sections 23-15-621 through 23-15-653.

**HISTORY:**

Derived from 1972 Code § 23-9-403 [Codes, 1942, § 3203-402; Laws, 1972, ch. 490, § 402; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 199, eff from and after January 1, 1987.

### § 23-15-625. Duties of registrar relating to the provision and disbursement of absentee voting applications; request for application by person other than elector seeking to vote by absentee ballot; solicitation of absentee ballot applications for persons staying in skilled nursing facility prohibited; exceptions; maintenance of list of absentee voters; public access to list; placement of absentee ballots in ballot boxes; authority to mail applications to qualified electors; use of Statewide Election Management System.

(1) The registrar shall be responsible for providing applications for absentee voting as provided in this section. At least sixty (60) days prior to any election in which absentee voting is provided for by law, the registrar shall provide a sufficient number of applications. In the event a special election is called and set at a date which makes it impractical or impossible to prepare applications for absent elector's ballot sixty (60) days prior to the election, the registrar shall provide applications as soon as practicable after the election is called. The registrar shall fill in the date of the particular election on the application for which the application will be used.

(2) The registrar shall be authorized to disburse applications for absentee ballots to any qualified elector within the county where he serves. Any person who presents to the registrar an oral or written request for an absentee ballot application for a voter entitled to vote absentee by mail, other than the elector who seeks to vote by absentee ballot, shall, in the presence of the registrar, sign the application and print on the application his or her name and address and the name of the elector for whom the application is being requested in the place provided for on the application for that purpose. However, if for any reason such person is unable to write the information required, then the registrar shall write the information on a printed form which has been prescribed by the Secretary of State. The form shall provide a place for such person to place his mark after the form has been filled out by the registrar.

(3) It shall be unlawful for any person to solicit absentee ballot applications or absentee ballots for persons staying in any skilled nursing facility as defined in Section 41-7-173. This prohibition shall not apply to:

(a) A family member of the person staying in the skilled nursing facility; or

(b) A person designated by the person for whom the absentee ballot application or absentee ballot is sought, the registrar or the deputy registrar.

As used in this subsection, "family member" means a spouse, parent, grandparent, sibling, adult child, grandchild or legal guardian.

(4) The registrar in the county wherein a voter is qualified to vote upon receiving the envelope containing the absentee ballots shall keep an accurate list of all persons preparing such ballots, which list shall be kept in a conspicuous place accessible to the public near the entrance to his office. The registrar shall also furnish to each precinct manager a list of the names of all persons in each respective precinct voting absentee ballots to be posted in a

conspicuous place at the polling place for public notice. The application on file with the registrar and the envelopes containing the ballots shall be kept by the registrar and deposited in the proper precinct ballot boxes before such boxes are delivered to the election commissioners or managers. At the time such boxes are delivered to the election commissioners or managers, the registrar shall also turn over a list of all such persons who have voted and whose ballots are in the box.

(5) The registrar shall also be authorized to mail one (1) application to any qualified elector of the county for use in a particular election.

(6) The registrar shall process all applications for absentee ballots by using the Statewide Election Management System. The registrar shall account for all absentee ballots delivered to and received from qualified voters by processing such ballots using the Statewide Election Management System.

**HISTORY:**

Derived from 1972 Code § 23-9-405 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490, § 405; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 200; Laws, 1993, ch. 528, § 5; Laws, 1999, ch. 420, § 1; Laws, 2006, ch. 574, § 16; Laws, 2008, ch. 528, § 9; Laws, 2012, ch. 471, § 2, eff September 6, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

The United States Attorney General, by letter dated August 6, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1993, ch. 528, § 5.

On June 17, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 420, § 1.

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, § 16.

On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

By letter dated September 6, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 471.

## OPINIONS OF THE ATTORNEY GENERAL

An inadvertent omission of names from the list of absentee voters would not cause a vote to be invalid; however, the application form must still be valid for the vote to be counted. 1999 Miss. Op. Att'y Gen. 697.

The provisions of the statute that refer to the sequential numbering of absentee ballots and the filing of the affidavit by the clerk upon receipt of same have not obtained the required preclearance from the United States Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, and therefore, have not taken effect. 1999 Miss. Op. Att'y Gen. 697.

## RESEARCH REFERENCES

**ALR.**

Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 316-341.

**CJS.**

29 C.J.S., Elections §§ 543–560.

### § 23-15-627. Distribution of absentee ballot application by registrar; request for absentee ballot application by certain persons on behalf of an elector; form of application.

The registrar shall be responsible for furnishing an absentee ballot application form to any elector authorized to receive an absentee ballot. Except as otherwise provided in Section 23-15-625, absentee ballot applications shall be furnished to a person only upon the oral or written request of the elector who seeks to vote by absentee ballot; however, the parent, child, spouse, sibling, legal guardian, those empowered with a power of attorney for that elector's affairs or agent of the elector, who is designated in writing and witnessed by a resident of this state who shall write his or her physical address on such designation, may orally request an absentee ballot application on behalf of the elector. The written designation shall be valid for one (1) year after the date of the designation. An absentee ballot application must have the seal of the circuit or municipal clerk affixed to it and be initialed by the registrar or his deputy in order to be utilized to obtain an absentee ballot. A reproduction of an absentee ballot application shall not be valid unless it is a reproduction provided by the office of the registrar of the jurisdiction in which the election is being held and which contains the seal and initials required by this section. Such application shall be substantially in the following form:

"OFFICIAL APPLICATION FOR ABSENT ELECTOR'S BALLOT

I, ________, duly qualified and registered in the ________ Precinct of the County of ________, and State of Mississippi, coming within the purview of the definition 'ABSENT ELECTOR' will be absent from the county of my residence on election day, or unable to vote in person because (check appropriate reason):

( ) (PRESIDENTIAL APPLICANT ONLY:) I am currently a resident of Mississippi or have moved therefrom within thirty (30) days of the coming presidential election.

( ) I am an enlisted or commissioned member, male or female, of any component of the United States Armed Forces and am a citizen of Mississippi, or spouse or dependent of such member.

( ) I am a member of the Merchant Marine or the American Red Cross and am a citizen of Mississippi or spouse or dependent of such member.

( ) I am a disabled war veteran who is a patient in any hospital and am a citizen of Mississippi or spouse or dependent of such veteran.

( ) I am a civilian attached to and serving outside of the United States with any branch of the Armed Forces or with the Merchant Marine or American Red Cross, and am a citizen of Mississippi or spouse or dependent of such civilian.

( ) I am a citizen of Mississippi temporarily residing outside the territorial limits of the United States and the District of Columbia.

( ) I am a student, teacher or administrator at a college, university, junior or community college, high, junior high, elementary or grade school, whose studies or employment at such institution necessitates my absence from the county of my voting residence or spouse or dependent of such student, teacher or administrator who maintains a common domicile outside the county of my voting residence with such student, teacher or administrator.

( ) I will be outside the county on election day.

( ) I have a temporary or permanent physical disability.

( ) I am sixty-five (65) years of age or older.

( ) I am the parent, spouse or dependent of a person with a temporary or permanent physical disability who is hospitalized outside his county of residence or more than fifty (50) miles away from his residence, and I will be with such person on election day.

( ) I am a member of the congressional delegation, or spouse or dependent of a member of the congressional delegation.

( ) I am required to be at work on election day during the times which the polls will be open.

I hereby make application for an official ballot, or ballots, to be voted by me at the election to be held in ________, on ________.

Mail 'Absent Elector's Ballot' to me at the following address ________ (if eligible to vote by mail).

I realize that I can be fined up to Five Thousand Dollars ($5,000.00) and sentenced up to five (5) years in the Penitentiary for making a false statement in this application and for selling my vote and violating the Mississippi Absentee Voter Law. (This sentence is to be in bold print.)

If you are temporarily or permanently disabled, you are not required to have this application notarized or signed by an official authorized to administer oaths for absentee balloting. You are required to sign this application in the proper place and have a person eighteen (18) years of age or older witness your signature and sign this application in the proper place.

DO NOT SIGN WITHOUT READING. (This sentence is to be in bold print.)

IN WITNESS WHEREOF I have hereunto set my hand and seal this the ________ day of ________, 2________.

________________________________(Signature of absent elector)

SWORN TO AND SUBSCRIBED before me this the ________ day of ________, 2________.

______________________________________________

(Official authorized to administer oaths for absentee balloting.)

TO BE SIGNED BY WITNESS FOR VOTERS TEMPORARILY OR PERMANENTLY DISABLED:

I HEREBY CERTIFY that this application for an absent elector's ballot was signed by the above-named disabled elector in my presence and that I am at least eighteen (18) years of age, this the ________ day of ________, 2________.

________________________________

(Signature of witness)

CERTIFICATE OF DELIVERY

I hereby certify that ________ (print name of voter) has requested that I, ________ (print name of person delivering application), deliver to the voter this absentee ballot application.

(Signature of person delivering application)

(Address of person delivering application)"

**HISTORY:**

Derived from 1972 Code § 23-9-407 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490, § 403; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 201; Laws, 1986, ch. 495, § 201; Laws, 1993, ch. 528, § 6; Laws, 1999, ch. 420, § 2; Laws, 2000, ch. 592, § 9; Laws, 2008, ch. 528, § 10, eff August 7, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

The United States Attorney General never granted preclearance approval to the amendment of this section by Laws of 1987, ch. 499, § 11; therefore, the amendment never went into effect.

The United States Attorney General, by letter dated August 16, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1993, ch. 528, § 6.

On June 17, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 420, § 2.

Laws of 2000, ch. 592, §§ 19, 20, provide:

"SECTION 19. The Attorney General of the State of Mississippi shall submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

"SECTION 20. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended."

On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

**Cross References —**

Provisions of the Mississippi Absentee Voter Law (Subarticle C of this article) that an elector who desires an absentee ballot must execute and file an application as provided in this section, see §§ 23-15-715 and 23-15-717.

## JUDICIAL DECISIONS

**1. In general.**

In a case challenging an order by a circuit court that a special election had to be held for sheriff because there were irregularities with the absentee ballots in the primary election, 103 ballots violated Miss. Code Ann. § 23-15-627 because the blanks where the signatures of the official authorized to administer oaths for absentee balloting were, in fact, blank. The absence of those signatures made those 103 votes illegal, and the incumbent had obtained a majority by only 11 votes, which included the absentee ballots. Thompson v. Jones, 17 So. 3d 524, 2008 Miss. LEXIS 704 (Miss. 2008).

Where a voter's name was on an absentee ballot application, the application was initialed, and the circuit clerk seal was affixed to the application, the ballot was counted in a primary election. Smith v. Hollins, 905 So. 2d 1267, 2005 Miss. LEXIS 388 (Miss. 2005).

In performing statutory duties with respect to absentee ballots, the county registrar must perform in strict compliance with the statutes. Lewis v. Griffith, 664 So. 2d 177, 1995 Miss. LEXIS 450 (Miss. 1995).

A town clerk's actions were not in compliance with the statutes governing absentee ballots where she hand-delivered 3 absentee ballots to her able-bodied relatives after normal business hours, and the ballots were executed outside the town hall. Lewis v. Griffith, 664 So. 2d 177, 1995 Miss. LEXIS 450 (Miss. 1995).

Sections 23-15-627, 23-15-635, 23-15-715, 23-15-717, and 23-15-719, which designate the procedures for application and completion of absentee ballots, are mandatory rather than directory in nature. Rogers v. Holder, 636 So. 2d 645, 1994 Miss. LEXIS 59 (Miss. 1994).

**Cited in:** Jefferson Davis County v. Davies, 912 So. 2d 837, 2005 Miss. LEXIS 212 (Miss. 2005).

### OPINIONS OF THE ATTORNEY GENERAL

A city election commission may not count absentee ballots that were obtained due to improper application forms. 1999 Miss. Op. Att'y Gen. 697.

### RESEARCH REFERENCES

**ALR.**

Validity of governmental requirement of oath as applied to voters. 18 A.L.R.2d 268.

Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**

26 Am. Jur. 2d, Elections § 337.

**CJS.**

29 C.J.S., Elections §§ 543–560.

**Law Reviews.**

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

## § 23-15-629. Applications by persons who are permanently physically disabled; listing of qualified electors; distribution of ballots.

(1) The application for an absentee ballot of a person who is permanently physically disabled shall be accompanied by a statement signed by such person's physician, or nurse practitioner, which statement must show that the person signing the statement is a licensed, practicing medical doctor or nurse practitioner and must indicate that the person applying for the absentee ballot is permanently physically disabled to such a degree that it is difficult for him to vote in person.

(2) An application accompanied by the statement provided for in subsection (1) of this section shall entitle such permanently physically disabled person to automatically receive an absentee ballot for all elections on a continuing basis without the necessity for reapplication.

(3) The registrar of each county shall keep an accurate list of the names and addresses of all persons whose applications for absentee ballot are accompanied by the statement set forth in subsection (1) of this section. Sixty (60) days prior to each election, the registrar shall deliver such list to the commissioners of election who shall examine the list and delete from it the names of all persons listed who are no longer qualified electors of the county. Upon completion of such examination, the commissioners of election shall return the list to the registrar by no later than forty-five (45) days prior to the election.

(4) The registrar shall send a ballot to all persons who are determined by the commissioners of election to be qualified electors pursuant to subsection (3) of this section by no later than forty (40) days prior to the election.

**HISTORY:**

Laws, 1986, ch. 495, § 202; Laws, 1995, ch. 344, § 1; Laws, 2006, ch. 574, § 17, eff June 5, 2006 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

The United States Attorney General, by letter dated August 17, 1995, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment to this section by Laws of 1995, ch. 344, § 1.

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, § 17.

## JUDICIAL DECISIONS

**1. In general.**

While law provided that disabled registered voter could vote by absentee ballot, no similar provision existed for registration of disabled prospective voter; upon proper certification of deputy registrar, notary public, or other designated official, such person might call upon prospective voter and perfect registration in manner similar to voting procedure applicable to disabled and infirmed. Mississippi State Chapter, Operation Push v. Allain, 674 F. Supp. 1245, 1987 U.S. Dist. LEXIS 10925 (N.D. Miss. 1987).

## OPINIONS OF THE ATTORNEY GENERAL

A voter who is blind or is unable to read the ballot or mark the ballot and possesses the mental capacity to express his will as to how he wishes to vote and is qualified to vote by absentee ballot, is not disenfranchised but to entitled to receive the needed assistance that is statutorily provided for persons who vote at the polls. 1991 Miss. Op. Att'y Gen. 886.

## RESEARCH REFERENCES

**ALR.**

Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 316-341.

**CJS.**

29 C.J.S., Elections §§ 543–560.

**Law Reviews.**

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

## § 23-15-631. Instructions to absent electors; instructions as constituting substantive law.

(1) The registrar shall enclose with each ballot provided to an absent elector separate printed instructions furnished by the registrar containing the following:

(a) All absentee voters, excepting those with temporary or permanent physical disabilities or those who are sixty-five (65) years of age or older, who mark their ballots in the county of the residence shall use the registrar of that county as the witness. The absentee voter shall come to the office of the registrar and neither the registrar nor his or her deputy shall be required to go out of the registrar's office to serve as an attesting witness.

(b) Upon receipt of the enclosed ballot, you will not mark the ballot except in view or sight of the attesting witness. In the sight or view of the attesting witness, mark the ballot according to instructions.

(c) After marking the ballot, fill out and sign the "ELECTOR'S CERTIFICATE" on the back of the envelope so that the signature is across the flap of the envelope to ensure the integrity of the ballot. All absent electors shall have the attesting witness sign the "ATTESTING WITNESS CERTIFI-

CATE" across the flap on the back of the envelope. Place the necessary postage on the envelope and deposit it in the post office or some government receptacle provided for deposit of mail so that the absent elector's ballot, excepting presidential absentee ballots, will reach the registrar in which your precinct is located not later than 5:00 p.m. on the day preceding the date of the election.

Any notary public, United States postmaster, assistant United States postmaster, United States postal supervisor, clerk in charge of a contract postal station, or other officer having authority to administer an oath or take an acknowledgment may be an attesting witness; provided, however, that in the case of an absent elector who is temporarily or permanently physically disabled, the attesting witness may be any person eighteen (18) years of age or older and such person is not required to have the authority to administer an oath. If a postmaster, assistant postmaster, postal supervisor, or clerk in charge of a contract postal station acts as an attesting witness, his or her signature on the elector's certificate must be authenticated by the cancellation stamp of their respective post offices. If an officer having authority to administer an oath or take an acknowledgement acts as attesting witness, his or her signature on the elector's certificate, together with his or her title and address, but no seal, shall be required. Any affidavits made by an absent elector who is in the Armed Forces may be executed before a commissioned officer, warrant officer, or noncommissioned officer not lower in grade than sergeant rating or any person authorized to administer oaths.

(d) When the application accompanies the ballot it shall not be returned in the same envelope as the ballot but shall be returned in a separate preaddressed envelope provided by the registrar.

(e) A candidate for public office, or the spouse, parent or child of a candidate for public office, may not be an attesting witness for any absentee ballot upon which the candidate's name appears, unless the voter is related within the first degree to the candidate or the spouse, parent or child of the candidate.

(f) Any voter casting an absentee ballot who declares that he or she requires assistance to vote by reason of blindness, temporary or permanent physical disability or inability to read or write, shall be entitled to receive assistance in the marking of his or her absentee ballot and in completing the affidavit on the absentee ballot envelope. The voter may be given assistance by anyone of the voter's choice other than a candidate whose name appears on the absentee ballot being marked, the spouse, parent or child of a candidate whose name appears on the absentee ballot being marked or the voter's employer, an agent of that employer or a union representative; however, a candidate whose name is on the ballot or the spouse, parent or child of such candidate may provide assistance upon request to any voter who is related within the first degree. In order to ensure the integrity of the ballot, any person who provides assistance to an absentee voter shall be required to sign and complete the "Certificate of Person Providing Voter Assistance" on the absentee ballot envelope.

(2) The foregoing instructions required to be provided by the registrar to the elector shall also constitute the substantive law pertaining to the handling of absentee ballots by the elector and registrar.

(3) The Secretary of State shall prepare instructions on how absent voters may comply with the identification requirements of Section 23-15-563.

**HISTORY:**

Derived from 1972 Code § 23-9-409 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490, 3403; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 203; Laws, 1987, ch. 499, § 12; Laws, 1999, ch. 420, § 3; Laws, 2000, ch. 592, § 10; Laws, 2006, ch. 574, § 18; Laws, 2012, ch. 526, § 6; Laws, 2017, ch. 441, § 187, eff from and after July 1, 2017.

**Editor's Notes —**

Laws of 1987, ch. 499, §§ 20, 21 and 22, provide as follows:

"SECTION 20. If any section, paragraph, sentence, clause or phrase of this act is declared to be unconstitutional or void, or for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses or phrases shall be in no manner affected thereby but shall remain in full force and effect.

"SECTION 21. The Attorney General of the State of Mississippi is hereby directed to submit this act immediately upon its approval by the Legislature to the Attorney General of the United States or the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

"SECTION 22. This act shall take effect and be in force from and after the date it is effectuated under the provisions of Section 5 of the Voting Rights Act of 1965, as amended and extended."

Laws of 1987, ch. 499, § 12, proposed to amend Section 23-15-631 by deleting the phrase "or those who are sixty-five (65) years of age or older" from (1)(a), and by deleting a paragraph in (1)(c) which stated "Persons having temporary or permanent physical disabilities shall not be required to have the certificate of attesting witness signed."

On July 24, 1987, the United States Attorney General interposed no objection to the deletion of the paragraph in (1)(c), but did, however, reserve opinion about the deletion of the phrase concerning persons over sixty-five years of age, and requested additional information from the Mississippi Attorney General's Office about such deletion.

As set out above, the provisions of Section 23-15-631 appear as printed in Laws of 1987, ch. 499, § 12, with the EXCEPTION of the phrase concerning persons over sixty-five years of age in (1)(a) which has been retained from Laws of 1986, ch. 495, § 203, by direction of the Attorney General of the State of Mississippi.

On June 21, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 420, § 3.

On July 28, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws, 2000, ch. 592.

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 2006, ch. 574, § 18.

The effective date of the bill that amended this section, Chapter 526, Laws of 2012 (House Bill No. 921), is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bill was submitted to the United States Attorney General under Section 5, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. Chapter 526 was submitted to the United States Attorney General before the *Shelby County* decision was rendered. In a letter dated August 5, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 526 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 526, so Chapter 526 became effective on the date of the response letter from the United States Attorney General, August 5, 2013.

**Amendment Notes —**

The 2017 amendment substituted "furnished by the registrar" for "furnished by him" in the introductory paragraph of (1); in (1)(c), substituted "ensure the integrity" for "insure the integrity" in the first paragraph, and in the second paragraph, substituted "other officer" for "any officer" in the first sentence, and "If an officer having authority to administer an oath or take an acknowledgement acts" for "If one or the other officers herein named acts" in the third sentence; rewrote (1)(e), which read: "A person who is a candidate for public office may not be an attesting witness for any absentee ballot upon which the person's name appears"; rewrote the second sentence of (1)(f), which read: "The voter may be given assistance by anyone of the voter's choice other than a candidate whose name appears on the absentee ballot being marked, or the voter's employer, or agent of that employer"; and made gender neutral and minor stylistic changes.

## JUDICIAL DECISIONS

### ANALYSIS

1. Attesting witness.
2.-5. [Reserved for future use.]

**1. Attesting witness.**

Although a disabled person's signature on an absentee ballot envelope was not required to be sworn, the ballot could not be counted because no person had signed the ballot envelope as an attesting witness as required by Miss. Code Ann. §§ 23-15-631(1)(c) and 23-15-635. Smith v. Hollins, 905 So. 2d 1267, 2005 Miss. LEXIS 388 (Miss. 2005).

**2.-5. [Reserved for future use.]**

## OPINIONS OF THE ATTORNEY GENERAL

With regard to the name on the flap of an absentee ballot, even with the absence of the appearance of fraud, example (a) was unacceptable because there were no signature lines across the flap, no portion of the actual signature was written across the flap, and there was no attesting witness signature line or signature across the flap; further, example (b) was also unacceptable because there were no signature lines across the flap and there was no signature of an attesting witness. 2000 Miss. Op. Att'y Gen. 571.

## RESEARCH REFERENCES

**ALR.**

Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 313-315 (Assistance to voters, generally).

26 Am. Jur. 2d, Elections §§ 316-341.

**CJS.**

29 C.J.S., Elections §§ 543–560.

**Law Reviews.**

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

## § 23-15-633. Signatures of elector and attesting witness across flap of envelope.

On any envelope where the elector's signature and the signature of the attesting witness are required, the signature lines and the signatures shall be across the flap of the envelope to insure the integrity of the ballot and the following shall be printed on the flap on the back of the envelope in bold print and in a distinguishing color: **"YOUR VOTE WILL BE REJECTED AND NOT COUNTED IF THIS ENVELOPE IS NOT SIGNED ACROSS THE FLAP OF THIS ENVELOPE BY YOU AND AN ATTESTING WITNESS."**

**HISTORY:**

Derived from 1972 Code § 23-9-411 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490, § 403; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 204; Laws, 2008, ch. 528, § 12, eff August 7, 2008 (the date the

United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

## JUDICIAL DECISIONS

**Cited in:** Jefferson Davis County v. Davies, 912 So. 2d 837, 2005 Miss. LEXIS 212 (Miss. 2005).

## OPINIONS OF THE ATTORNEY GENERAL

With regard to the name on the flap of an absentee ballot, even with the absence of the appearance of fraud, example (a) was unacceptable because there were no signature lines across the flap, no portion of the actual signature was written across the flap, and there was no attesting witness signature line or signature across the flap; further, example (b) was also unacceptable because there were no signature lines across the flap and there was no signature of an attesting witness. 2000 Miss. Op. Att'y Gen. 571.

## RESEARCH REFERENCES

**ALR.**

Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**

26 Am. Jur. 2d, Elections § 338.

**CJS.**

29 C.J.S., Elections §§ 543–560.

## § 23-15-635. Form of elector's certificate, attesting witness certification, and voter assistance certificate where county registrar is not attesting witness and voter is not absent voter as defined in the Armed Forces Absentee Voting Law.

(1) The form of the elector's certificate, attesting witness certification and certificate of person providing voter assistance on the back of the envelope used by voters who do not use the registrar of their county of residence as an attesting witness and who are not absent voters as defined in Section 23-15-673, shall be as follows:

"ELECTOR'S CERTIFICATE

STATE OF _______
COUNTY OR PARISH OF _______

I, _______, under penalty of perjury do solemnly swear that this envelope contains the ballot marked by me indicating my choice of the candidates or propositions to be submitted at the election to be held on the ________ day of ________, 2________, and I hereby authorize the registrar to place this envelope in the ballot box on my behalf, and I further authorize the election managers to open this envelope and place my ballot among the other ballots cast before such ballots are counted, and record my name on the poll list as if I were present in person and voted.

I further swear that I marked the enclosed ballot in secret.

**Penalties for vote fraud are up to five (5) years in prison and a fine of up to Five Thousand Dollars ($5,000.00). (Miss. Code. Ann. Section 23-15-753.) Penalties for voter intimidation are up to one year in jail and a fine of up to One Thousand Dollars ($1,000.00). (Miss. Code. Ann. Section 97-13-37.)**

________________________________________
(Signature of voter)

CERTIFICATE OF ATTESTING WITNESS

Under penalty of perjury I affirm that the above named voter personally appeared before me, on this the ________ day of ________, 2________, and is known by me to be the person named, and who, after being duly sworn or having affirmed, subscribed the foregoing oath or affirmation. That the voter exhibited to me his blank ballot; that the ballot was not marked or voted before the voter exhibited the ballot to me; that the voter was not solicited or advised by me to vote for any candidate, question or issue, and that the voter, after marking his ballot, placed it in the envelope, closed and sealed the envelope in my presence, and signed and swore or affirmed the above certificate.

________________ ________________
(Attesting witness) (Address)

________________ ________________
(Official title) (City and State)

CERTIFICATE OF PERSON PROVIDING VOTER ASSISTANCE

(To be completed only if the voter has received assistance in marking the enclosed ballot.) I, under penalty of perjury, hereby certify that the above-named voter declared to me that he or she is blind, temporarily or permanently physically disabled, or cannot read or write, and that the voter requested that I assist the voter in marking the enclosed absentee ballot. I hereby certify that the ballot preferences on the enclosed ballot are those communicated by the voter to me, and that I have marked the enclosed ballot in accordance with the voter's instructions.

**Penalties for vote fraud are up to five (5) years in prison and a fine of up to Five Thousand Dollars ($5,000.00). (Miss. Code. Ann. Section 23-15-753.) Penalties for voter intimidation are up to one (1) year in jail and a fine of up to One Thousand Dollars ($1,000.00). (Miss. Code. Ann. Section 97-13-37.)**

______________________________
Signature of person providing assistance

______________________________
Printed name of person providing assistance

______________________________
Address of person providing assistance

______________________________
Date and time assistance provided

______________________________
Family relationship to voter (if any)"

(2) The envelope used pursuant to this section shall not contain the form prescribed pursuant to Section 23-15-719 and shall have printed on the flap on the back of the envelope in bold print and in a distinguishing color, the following: **"YOUR VOTE WILL BE REJECTED AND NOT COUNTED IF THIS ENVELOPE IS NOT SIGNED ACROSS THE FLAP OF THIS ENVELOPE BY YOU AND AN ATTESTING WITNESS."**

**HISTORY:**

Derived from 1972 Code § 23-9-19 [(Codes, 1942, § 3196-10; Laws, 1942, ch. 202; Laws, 1954, ch. 359, § 10), repealed by Laws, 1972, ch. 490, § 604] and § 23-9-413 [ (Codes, § 3203-403; Laws, 1972, ch. 490, § 403) repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 205; Laws, 1999, ch. 420, § 4; Laws, 2008, ch. 528, § 11; Laws, 2010, ch. 446, § 9, eff July 9, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

On June 17, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 420, § 4.

On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

By letter dated July 15, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446.

**Cross References —**

Provisions relative to whether the envelope used by absentee voters under the Mississippi Absentee Voter Law (Subarticle C of this article) shall contain the form prescribed by this section, see §§ 23-15-719 and 23-15-721.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Mistake.
3.-5. [Reserved for future use.]
6. Under former Section 23-9-19.
7. Under former Section 23-9-413.

**1. In general.**

Circuit court properly found that mail-in absentee ballots that did not comply with Miss. Code Ann. § 23-15-635(1) were illegal since strict compliance was necessary; however, once it found that a losing candidate received the greatest number of legal votes, it was error to order a special election instead of utilizing Miss. Code Ann. § 23-15-951. Ruhl v. Walton, 955 So. 2d 279, 2007 Miss. LEXIS 186 (Miss. 2007).

Although a disabled person's signature on an absentee ballot envelope was not required to be sworn, the ballot could not be counted because no person had signed the ballot envelope as an attesting witness as required by Miss. Code Ann. §§ 23-15-631(1)(c) and 23-15-635. Smith v. Hollins, 905 So. 2d 1267, 2005 Miss. LEXIS 388 (Miss. 2005).

Trial court erred in granting a candidate for county supervisor a directed verdict in election contest case, as the completion of as many as 30 absentee ballots by the candidate's supporter on behalf of illiterate and/or disabled voters called into question the integrity of these ballots. Straughter v. Collins, 819 So. 2d 1244, 2002 Miss. LEXIS 198 (Miss. 2002).

A voter may not authorize another person to sign the voter's name to the affidavit, even where the voter is unable to sign due to some disability. Campbell v. Whittington, 733 So. 2d 820, 1999 Miss. LEXIS 99 (Miss. 1999).

Under Mississippi's election statutes, absentee ballots may be executed in one of 2 ways – by appearing in person before the county registrar and executing an application and ballot, or by requesting a ballot by mail and mailing it back. Lewis v. Griffith, 664 So. 2d 177, 1995 Miss. LEXIS 450 (Miss. 1995).

Sections 23-15-627, 23-15-635, 23-15-715, 23-15-717, and 23-15-719, which designate the procedures for application and completion of absentee ballots, are mandatory rather than directory in nature. Rogers v. Holder, 636 So. 2d 645, 1994 Miss. LEXIS 59 (Miss. 1994).

**2. Mistake.**

Where a woman completed both the certificate of the attesting witness and the certificate of person providing voter assistance on the back of absentee ballot envelopes of 14 physically disabled voters, the mistake was of a technical nature and did not require that the votes be invalidated. Boyd v. Tishomingo County Democratic Exec. Comm. & Members, 912 So. 2d 124, 2005 Miss. LEXIS 840 (Miss. 2005).

**3.-5. [Reserved for future use.]**

**6. Under former Section 23-9-19.**

Where on an absentee ballot of a member of armed forces the certifying officer signed his name in the blank space of the certificate but did not sign at the end of the certificate but put only his official title, this was sufficient compliance with the requirement of this section as amended in 1954. Anders v. Longmire, 226 Miss. 215, 83 So. 2d 828, 1955 Miss. LEXIS 627 (Miss. 1955).

**7. Under former Section 23-9-413.**

The absence of an attesting witness' signature on an absentee ballot envelope is a departure from a fundamental provision in the election code and, therefore, the absentee ballot should not be counted. Shannon v. Henson, 499 So. 2d 758, 1986 Miss. LEXIS 2883 (Miss. 1986).

### RESEARCH REFERENCES

**ALR.**

Validity of governmental requirement of oath as applied to voters. 18 A.L.R.2d 268.

Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**

26 Am. Jur. 2d, Elections § 338.

**CJS.**

29 C.J.S., Elections §§ 543–560.

## § 23-15-637. Timely casting of ballots.

Absentee ballots received by mail, except presidential ballots as provided for in Sections 23-15-731 and 23-15-733 and except as otherwise provided by Section 23-15-699, must be received by the registrar by 5:00 p.m. on the date preceding the election; any received after such time shall be handled as provided in Section 23-15-647 and shall not be counted. All ballots cast by the absent elector appearing in person in the office of the registrar shall be cast not later than 12:00 noon on the Saturday immediately preceding elections held on Tuesday, the Thursday immediately preceding elections held on Saturday, or the second day immediately preceding the date of elections held on other days. The registrar shall deposit all absentee ballots which have been timely cast in the ballot boxes upon receipt.

**HISTORY:**

Derived from 1972 Code § 23-9-415 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490, § 403; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 206; Laws, 2012, ch. 465, § 4, eff September 17, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

By letter dated September 17, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 465.

### OPINIONS OF THE ATTORNEY GENERAL

No authority can be found that would allow a county registrar to open the ballot box and retrieve an absentee ballot cast in one party primary election and then allow the voter to cast another ballot in another party primary. 2003 Miss. Op. Att'y Gen. 363.

The failure to strictly comply with statutory provisions regarding the examination and counting of absentee ballots by poll workers should not serve to invalidate lawfully cast ballots and to disenfranchise the voters, and absentee ballots in question should be counted. Newton County Election 2003 Miss. Op. Att'y Gen. 620.

### RESEARCH REFERENCES

**ALR.**

Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**

26 Am. Jur. 2d, Elections § 339.

**CJS.**

29 C.J.S., Elections §§ 543–560.

**Law Reviews.**

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

## § 23-15-639. Examination of absentee ballots at close of polls; counting of ballots.

(1) In elections in which direct recording electronic voting systems are not utilized, the examination and counting of absentee ballots shall be conducted as follows:

(a) At the close of the regular balloting and at the close of the polls, the election managers of each voting precinct shall first take the envelopes containing the absentee ballots of such electors from the box, and the name, address and precinct inscribed on each envelope shall be announced by the election managers.

(b) The signature on the application shall then be compared with the signature on the back of the envelope. If it corresponds and the affidavit, if one is required, is sufficient and the election managers find that the applicant is a registered and qualified voter or otherwise qualified to vote, and that he has not appeared in person and voted at the election, the envelope shall then be opened and the ballot removed from the envelope, without its being unfolded, or permitted to be unfolded or examined.

(c) Having observed and found the ballot to be regular as far as can be observed from its official endorsement, the election managers shall deposit it in the ballot box with the other ballots before counting any ballots and enter the voter's name in the receipt book provided for that purpose and mark "VOTED" in the pollbook or poll list as if he had been present and voted in person. If voting machines are used, all absentee ballots shall be placed in the ballot box before any ballots are counted, and the election managers in each precinct shall immediately count such absentee ballots and add them to the votes cast in the voting machine or device.

(2) In elections in which direct recording electronic voting systems are utilized, the examination and counting of absentee ballots shall be conducted as follows:

(a) At the close of the regular balloting and at the close of the polls, the election managers of each voting precinct shall first take the envelopes containing the absentee ballots of such electors from the box, and the name, address and precinct inscribed on each envelope shall be announced by the election managers.

(b) The signature on the application shall then be compared with the signature on the back of the envelope. If it corresponds and the affidavit, if one is required, is sufficient and the election managers find that the applicant is a registered and qualified voter or otherwise qualified to vote, and that he has not appeared in person and voted at the election, the unopened envelope shall be marked "ACCEPTED" and the election managers shall enter the voter's name in the receipt book provided for that purpose and mark "VOTED" in the pollbook or poll list as if he had been present and voted in person.

(c) All absentee ballot envelopes shall then be placed in the secure ballot transfer case and delivered to the officials in charge of conducting the election at the central tabulation point of the county. The official in charge of the election shall open the envelopes marked "ACCEPTED" and remove the ballot from the envelope.

(d) Having observed the ballot to be regular as far as can be observed from its official endorsement, the absentee ballot shall be processed through the central optical scanner. The scanned totals shall then be combined with the direct recording electronic voting system totals for the unofficial vote count.

When there is a conflict between an electronic voting system and a paper record, then there is a rebuttable presumption that the paper record is correct.

(3) The election managers shall also take such action as may be prescribed by the Secretary of State to ensure compliance with the identification requirements of Section 23-15-563.

**HISTORY:**

Derived from 1972 Code § 23-9-417 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490, § 403; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 207; Laws, 1993, ch. 528, § 9; Laws, 2006, ch. 574, § 19; Laws, 2012, ch. 526, § 7, eff August 5, 2013 (the date of the United States Attorney General's response to the submission of this section under Section 5 of the Voting Rights Act of 1965).

**Editor's Notes —**

The United States Attorney General, by letter August 16, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1993, ch. 528, § 9.

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, § 19.

The effective date of the bill that amended this section, Chapter 526, Laws of 2012 (House Bill No. 921), is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bill was submitted to the United

States Attorney General under Section 5, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. Chapter 526 was submitted to the United States Attorney General before the *Shelby County* decision was rendered. In a letter dated August 5, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 526 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 526, so Chapter 526 became effective on the date of the response letter from the United States Attorney General, August 5, 2013.

## JUDICIAL DECISIONS

**1. In general.**

Evidence supported determination of county democratic executive committee and election commission that voter's signature on absentee ballot did not match signature on ballot envelope, and therefore, court's order to committee to reconvene, open, and count such absentee ballot constituted reversible error; several persons involved in vote counting process determined that signatures did not match, voter's testimony was unclear, and members of committee testified that candidate stated that voter's daughter, rather than voter, signed ballot and envelope. Pegram v. Bailey, 694 So. 2d 664 (Miss. 1997).

## OPINIONS OF THE ATTORNEY GENERAL

The failure to strictly comply with statutory provisions regarding the examination and counting of absentee ballots by poll workers should not serve to invalidate lawfully cast ballots and to disenfranchise the voters, and absentee ballots in question should be counted. Newton County Election 2003 Miss. Op. Att'y Gen. 620.

## RESEARCH REFERENCES

**ALR.**

Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**

26 Am. Jur. 2d, Elections § 340.

**CJS.**

29 C.J.S., Elections §§ 543–560.

## § 23-15-641. Grounds for rejection of ballots; procedure.

(1) If an affidavit or the certificate of the officer before whom the affidavit is taken is required and such affidavit or certificate is found to be insufficient, or if it is found that the signatures do not correspond, or that the applicant is not a duly qualified elector in the precinct, or otherwise qualified to vote, or that the ballot envelope is open or has been opened and resealed, or the voter is not eligible to vote absentee or that the voter is present and has voted within the precinct where he represents himself to be a qualified elector, or otherwise qualified to vote, on the date of the election at such precinct, the previously cast vote shall not be allowed. Without opening the voter's envelope the commissioners of election, designated executive committee members or election managers, as appropriate, shall mark across its face "REJECTED", with the reason therefor.

(2) If the ballot envelope contains more than one (1) ballot of any kind, the ballot shall not be counted but shall be marked "REJECTED", with the reason therefor. The voter's envelopes and affidavits, and the voter's envelope with its contents unopened, when such vote is rejected, shall be retained and preserved in the same manner as other ballots at the election. Such votes may be challenged in the same manner and for the same reasons that any other vote cast in such election may be challenged.

(3) If an affidavit is required and the officials find that the affidavit is insufficient, or if the officials find that the absentee voter is otherwise disqualified to vote, the envelope shall not be opened and a commissioner or executive committee member shall write across the face of the envelope "REJECTED" giving the reason therefor, and the registrar shall promptly notify the voter of such rejection.

(4) The ballots marked "REJECTED" shall be placed in a separate envelope in the secure ballot transfer case and delivered to the officials in charge of conducting the election at the central tabulation point of the county.

**HISTORY:**

Derived from 1972 Code § 23-9-419 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490. § 403; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 208; Laws, 1993, ch. 528, § 11; Laws, 2006, ch. 574, § 20, eff June 5, 2006 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

The United States Attorney General, by letter August 16, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1993, ch. 528, § 11.

On June 5, 2006, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2006, ch. 574, § 20.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Relation to other laws.

**1. In general.**

The statute does not state reasons that are acceptable for signatures to not correspond; instead, it only states that a ground for rejecting an absentee ballot is that the signatures did not correspond. Pegram v. Bailey, 708 So. 2d 1307, 1997 Miss. LEXIS 170 (Miss. 1997).

Evidence supported determination of county democratic executive committee and election commission that voter's signature on absentee ballot did not match signature on ballot envelope, and therefore, court's order to committee to reconvene, open, and count such absentee ballot constituted reversible error; several persons involved in vote counting process determined that signatures did not match, voter's testimony was unclear, and members of committee testified that candidate stated that voter's daughter, rather than voter, signed ballot and envelope. Pegram v. Bailey, 694 So. 2d 664 (Miss. 1997).

Rejection of absentee ballot by election commissioners for "signature differences" between ballot and envelope was permissible under statute allowing rejection of absentee ballot for failure of signature on ballot and envelope to "correspond"; true intent of legislature was to disallow any ballot where signatures were different. Pegram v. Bailey, 694 So. 2d 664 (Miss. 1997).

**2. Relation to other laws.**

Black chairman of a county political party executive committee was guilty of racial discrimination under § 2 of the Voting Rights Act because, inter alia, he directed poll workers to count absentee votes from black voters who were not eligible to vote absentee or had already voted at the polls instead of rejecting their absentee ballots as required by Miss.

Code Ann. § 23-15-641. United States v. Brown, 494 F. Supp. 2d 440, 2007 U.S. Dist. LEXIS 47255 (S.D. Miss. 2007), aff'd, 561 F.3d 420, 2009 U.S. App. LEXIS 4030 (5th Cir. Miss. 2009).

**Cited in:** Jefferson Davis County v. Davies, 912 So. 2d 837, 2005 Miss. LEXIS 212 (Miss. 2005).

### RESEARCH REFERENCES

**ALR.**
Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**
26 Am. Jur. 2d, Elections § 341.

**CJS.**
29 C.J.S., Elections §§ 543–560.

## § 23-15-643. Examination of affidavits; challenges.

If an affidavit is required, the appropriate election officials shall examine the affidavit of each absentee ballot envelope. If the officials are satisfied that the affidavit is sufficient and that the absentee voter is otherwise qualified to vote, an official shall announce the name of the voter and shall give any person present an opportunity to challenge in like manner and for the same cause as the voter could have been challenged had he presented himself personally in such precinct to vote. The ineligibility of the voter to vote by absentee ballot shall be a ground for a challenge. Also, the officials shall consider any absentee voter challenged when a person has previously filed a written challenge of such voter's right to vote. The election officials shall handle any such challenge in the same manner as other challenged ballots are handled.

**HISTORY:**
Derived from 1972 Code § 23-9-421 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490, § 403; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 209, eff from and after January 1, 1987.

### RESEARCH REFERENCES

**ALR.**
Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**
26 Am. Jur. 2d, Elections §§ 337, 340, 341.

**CJS.**
29 C.J.S., Elections §§ 543–560.

## § 23-15-645. Preservation of materials relative to absentee voters; return of materials to registrar.

After the votes have been counted the officials shall preserve all applications, envelopes and the list of absent voters along with the ballots and other election materials and return the same to the registrar.

**HISTORY:**
Derived from 1972 Code § 23-9-423 [Codes, 1942, § 3203-403; Laws, 1972, ch. 490, § 403; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 210, eff from and after January 1, 1987.

RESEARCH REFERENCES

**ALR.**
Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**
26 Am. Jur. 2d, Elections § 340.

**CJS.**
29 C.J.S., Elections §§ 543–560.

## § 23-15-647. Disposition of absentee ballots received after applicable deadlines.

The registrar shall keep safely and unopened all official absentee ballots which are received subsequent to the applicable cutoff period establishing its validity. Upon receipt of such ballot, the registrar shall write the day and hour of the receipt of the ballot on its envelope. All such absentee ballots returned to the registrar after the cutoff time shall be safely kept unopened by the registrar for the period of time required for the preservation of ballots used in the election, and shall then, without being opened, be destroyed in like manner as the used ballots of the election.

**HISTORY:**
Derived from 1972 Code § 23-9-425 [Codes, 1942, § 3203-404; Laws, 1972, ch. 490, § 404; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 211, eff from and after January 1, 1987.

**Cross References —**
Requirement that absentee ballots received by the registrar by mail after after 5:00 p.m. on the day preceding the election be handled as provided in this section, see § 23-15-637.

RESEARCH REFERENCES

**ALR.**
Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**
26 Am. Jur. 2d, Elections §§ 339, 340.

**CJS.**
29 C.J.S., Elections §§ 543–560.

## § 23-15-649. Preparation and printing of absentee voter ballots.

For all elections, there shall be prepared and printed by the officials charged with this duty with respect to the election, as soon as the deadline for the qualification of candidates has passed or forty-five (45) days of the election, whichever is later, official ballots for each voting precinct to be known as absentee voter ballots, which ballots shall be prepared and printed in the same form and shall be of the same size and texture as the regular official ballot except that they shall be printed on tinted paper of a tint different from that of the regular official ballot.

**HISTORY:**
Derived from 1972 Code § 23-9-427 [Codes, 1942, § 3203-405; Laws, 1972, ch. 490, § 405; Laws, 1984, ch. 401, § 3; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 212, eff from and after January 1, 1987.

JUDICIAL DECISIONS

ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-9-427.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-9-427.**
The failure of absentee ballots to include the precinct name did not affect the validity of such ballots. Fouche v. Ragland, 424 So. 2d 559, 1982 Miss. LEXIS 2389 (Miss. 1982).

RESEARCH REFERENCES

**ALR.**
Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**
26 Am. Jur. 2d, Elections §§ 284-300, 316-341.

**CJS.**
29 C.J.S., Elections §§ 262-288, 330-336.

## § 23-15-651. Announcement of results of vote by absentee balloting.

The results of the vote by absentee balloting shall be announced simultaneously with the vote cast on election day.

**HISTORY:**
Derived from 1972 Code § 23-9-429 [Codes, 1942, § 3203-406; Laws, 1972, ch. 490, § 406; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 213, eff from and after January 1, 1987.

RESEARCH REFERENCES

**ALR.**
Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**
26 Am. Jur. 2d, Elections §§ 358 et seq.

## § 23-15-653. Hours of registrars' offices on two Saturdays prior to each election.

All registrars' offices shall remain open until noon on the two (2) Saturdays prior to each election.

**HISTORY:**
Derived from 1972 Code § 23-9-431 [Codes, 1942, § 3203-407; Laws, 1972, ch. 490, § 407; repealed by Laws, 1986, ch. 495, § 341]; en, Laws, 1986, ch. 495, § 214, eff from and after January 1, 1987.

RESEARCH REFERENCES

**Am. Jur.**
26 Am. Jur. 2d, Elections § 340.

**CJS.**
29 C.J.S., Elections §§ 543–560.

## § 23-15-657. Requests for absentee ballots by telephone.

The registrar is authorized to accept requests for absentee ballots by telephone. When a telephone request that an absentee ballot application be mailed by the registrar to an elector is made, the registrar shall ascertain the name and complete address of the person making the telephone request and shall print upon the absentee ballot application the name and complete address of the requestor and the relation of such person to the voter if requested by a person other than the voter and the date such request was made. Such requests shall be processed through the Statewide Election Management System.

**HISTORY:**

Laws, 1993, ch. 528, § 12; Laws, 2012, ch. 471, § 3, eff September 6, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

The United States Attorney General, by letter August 16, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 1993, ch. 528, § 12.

By letter dated September 6, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 471.

### RESEARCH REFERENCES

**ALR.**

Validity of absentee voters' laws, 97 A.L.R.2d 218.

Construction and effect of absentee voters' laws. 97 A.L.R.2d 257.

Residence of students for voting purposes. 44 A.L.R.3d 797.

**Am. Jur.**

26 Am. Jur. 2d Elections, §§ 333-341.

# SUBARTICLE B.

# ARMED SERVICES ABSENTEE VOTING LAW.

Sec.

23-15-671. Short title.
23-15-673. Definitions.
23-15-675. Right of absentees to vote.
23-15-677. Use of federal postcard application or Federal Write-In-Absentee Ballot.
23-15-679. Preparation and printing of absentee voter ballots.
23-15-681. Absentee ballot envelopes.
23-15-683. Preparation and distribution of ballots for first and second elections; ascertainment by absent voters of candidates in second election.
23-15-685. Distribution of absentee ballot materials upon application.
23-15-687. Applications for absentee ballots; preservation of applications.
23-15-689. Repealed.
23-15-691. Prompt distribution of absentee ballot materials; separation of envelope and other materials; instructions as to notation on envelope and use of ink or indelible pencil.
23-15-692. Federal Write-In Absentee Ballot.
23-15-693. Completion of declaration specified in federal Uniformed and Overseas Citizens Absentee Voting Act.
23-15-695. Repealed.
23-15-697. Mailing of envelope to registrar.
23-15-699. Transmission of absentee ballots and balloting materials to absent voters and receipt of voted absentee ballots, federal postcard applications and Federal Write-In-Absentee Ballots by mail, facsimile or electronic mail delivery.
23-15-701. Compliance with Uniformed and Overseas Citizens Absentee Voting Act; Secretary of State granted emergency powers over conduct of elections during armed conflict.

### § 23-15-671. Short title.

The title of Sections 23-15-671 through 23-15-697 shall be the Armed Services Absentee Voting Law.

**HISTORY:**

Derived from 1972 Code § 23-9-501 [Codes, 1942, § 3203-201; Laws, 1972, ch. 490, § 20; repealed by Laws, 1986, ch. 495, § 342]; en, Laws, 1986, ch. 495, § 215, eff from and after January 1, 1987.

### § 23-15-673. Definitions.

(1) For the purposes of this subarticle, the term "absent voter" shall mean and include the following persons if they are absent from their county of residence and are otherwise qualified to vote in Mississippi:

(a) Any enlisted or commissioned members, male or female, of the United States Army, or any of its respective components or various divisions thereof; any enlisted or commissioned members, male or female, of the United States Navy, or any of its respective components or various divisions thereof; any enlisted or commissioned members, male or female, of the United States Air Force, or any of its respective components or various divisions thereof; any enlisted or commissioned members, male or female, of the United States Marines, or any of its respective components or various divisions thereof; or any persons in any division of the armed services of the United States, who are citizens of Mississippi;

(b) Any member of the Merchant Marine and the American Red Cross who is a citizen of Mississippi;

(c) Any disabled war veteran who is a patient in any hospital and who is a citizen of Mississippi;

(d) Any civilian attached to and serving outside of the United States with any branch of the Armed Forces or with the Merchant Marine or American Red Cross, and who is a citizen of Mississippi;

(e) Any trained or certified emergency response provider who is deployed during the time period authorized by law for absentee voting, on election day, or during any state of emergency declared by the President of the United States or any Governor of any state within the United States;

(f) Any citizen of Mississippi temporarily residing outside the territorial limits of the United States and the District of Columbia;

(g) Any citizen of Mississippi enrolled as a student at the United States Naval Academy, the United States Coast Guard Academy, the United States Merchant Marine Academy, the United States Air Force Academy or the United States Military Academy.

(2) The spouse and dependents of any absent voter as set out in paragraphs (a) through (g) of subsection (1) of this section shall also be included in the meaning of absent voter and may register to vote and vote an absentee ballot as provided in this subarticle if also absent from the county of their residence on the date of the election and otherwise qualified to vote in Mississippi.

(3) For the purpose of this subarticle, the term "election" shall mean and include the following sets of elections: special and runoff special elections,

preferential and general elections, first and second primary elections or general elections without preferential elections, whichever system is applicable.

**HISTORY:**

Derived from 1972 Code § 23-9-503 [Codes, 1942, § 3203-202; Laws, 1972, ch. 490, § 202; repealed by Laws, 1986, ch. 495, § 342]; en, Laws, 1986, ch. 495, § 216; Laws, 2000, ch. 519, § 1; Laws, 2010, ch. 446, § 1; Laws, 2012, ch. 465, § 1; Laws, 2014, ch. 450, § 1, eff from and after July 1, 2014.

**Joint Legislative Committee Note —**

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (1)(g) by substituting "the United States Naval Academy for "the United States Navel Academy." The Joint Committee ratified the correction at its August 17, 2015, meeting.

**Editor's Notes —**

On August 7, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 519.

By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446.

By letter dated September 17, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 465.

**Cross References —**

Right of absent voters to vote, see § 23-15-675.

Use of federal postcard applications by absent voters for the purpose of requesting a ballot or a registration application or both, see § 23-15-677.

Receipt of completed absentee ballot applications, as defined in this section, by facsimile, see § 23-15-699.

## RESEARCH REFERENCES

**ALR.**

State voting rights of residents of military establishments. 34 A.L.R.2d 1193.

Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 316-341.

**CJS.**

29 C.J.S., Elections §§ 543–560.

## § 23-15-675. Right of absentees to vote.

Any absent voter, as defined in Section 23-15-673, who is otherwise qualified, may, upon compliance with the provisions of this subarticle, vote in any elections which are held in his voting precinct when he is absent for the reasons set forth in this subarticle.

**HISTORY:**

Derived from 1972 Code § 23-9-505 [Codes, 1942, § 3203-202; Laws, 1972, ch. 490, § 202; repealed by Laws, 1986, ch. 495, § 342]; en, Laws, 1986, ch. 495, § 217, eff from and after January 1, 1987.

**Joint Legislative Committee Note —**

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section. The words "upon compliance with the provisions of subarticle" were changed to "upon compliance with the provisions of this subarticle." The Joint Committee ratified the correction at its June 29, 2000, meeting.

RESEARCH REFERENCES

**ALR.**

State voting rights of residents of military establishments. 34 A.L.R.2d 1193.

Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 316-341.

**CJS.**

29 C.J.S., Elections §§ 543–560.

## § 23-15-677. Use of federal postcard application or Federal Write-In-Absentee Ballot.

(1) All absent voters as defined in Section 23-15-673(1) and (2) may use a duly executed federal postcard application (as provided for in the Uniformed and Overseas Citizens Absentee Voting Act, 42 USCS 1973ff et seq.) to request a ballot or to register to vote, or to do both simultaneously.

(2) An absent voter who registers to vote utilizing a federal postcard application or a Federal Write-In-Absentee Ballot may vote in an election if the voter was registered to vote ten (10) or more days prior to the date of the election.

**HISTORY:**

Derived from 1972 Code § 23-9-507 [Codes, 1942, § 3203-203; Laws, 1972, ch. 490, § 203; repealed by Laws, 1986, ch. 495, § 342]; en, Laws, 1986, ch. 495, § 218; Laws, 2000, ch. 519, § 2; Laws, 2010, ch. 446, § 2, eff July 9, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

On August 7, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 519.

By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446.

RESEARCH REFERENCES

**ALR.**

Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**

26 Am. Jur. 2d, Elections § 337.

**CJS.**

29 C.J.S., Elections §§ 543–560.

## § 23-15-679. Preparation and printing of absentee voter ballots.

The official absentee voter ballots shall be prepared and printed in the same form and shall be of the same size and texture as the regular official ballot except that they shall be printed on tinted paper of a tint different from that of the regular official ballot.

**HISTORY:**

Derived from 1972 Code § 23-9-5 [Codes, 1942, § 3196-03; Laws, 1954, ch. 359, § 3; repealed by Laws, 1972, ch. 490, § 604] and § 23-9-509 [Codes, 1942, § 3203-201; Laws, 1972, ch. 490, § 204; repealed by Laws, 1986, ch. 495, § 342]; en, Laws, 1986, ch. 495, § 219, eff from and after January 1, 1987.

### JUDICIAL DECISIONS

**ANALYSIS**

1.-5. [Reserved for future use.]
6. Under former law.

**1.-5. [Reserved for future use.]**

**6. Under former law.**

Requirement in this section (Laws 1942, ch. 202) as to the form of the ballot is directory and not mandatory, and a substantial compliance therewith, exercised in good faith under the existing circumstances of each case, where no wrong or injustice results, meets the requirements thereof. Gregory v. Sanders, 195 Miss. 508, 15 So. 2d 432, 1943 Miss. LEXIS 154 (Miss. 1943).

Absentee ballots, although larger in size than home ballots and containing name of candidate who had not qualified, was a sufficient compliance with requirement that an absentee ballot be a regular ballot containing the names of persons to be voted for or against in primary elections, taking into consideration purpose of statute to permit soldiers to express their right of suffrage, and fact that such soldiers are in distant lands, making it necessary that ballots be sent to them early, although changes in ballots may be necessary because of death, disability or withdrawal of candidates in the interim before election. Gregory v. Sanders, 195 Miss. 508, 15 So. 2d 432, 1943 Miss. LEXIS 154 (Miss. 1943).

In view of fact that crediting contestant with votes cast for candidate on absentee ballot, who did not qualify as a candidate, would not change result of election, contestant suffered no injury and had no right to complain. Gregory v. Sanders, 195 Miss. 508, 15 So. 2d 432, 1943 Miss. LEXIS 154 (Miss. 1943).

### RESEARCH REFERENCES

**ALR.**

Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 284-300, 316-341.

**CJS.**

29 C.J.S., Elections §§ 262-288, 330-336.

## § 23-15-681. Absentee ballot envelopes.

Except as otherwise provided in this subarticle, all official absentee ballots shall be sent out and returned in envelopes on which there is printed across the face two (2) parallel horizontal bars, each one-fourth (¼) of an inch wide, extending from one side of the envelope to the other side, with an intervening space of one-fourth (¼) of an inch, the top bar to be one and one-fourth (1-¼) inches from the top of the envelope, and with the words "OFFICIAL ELECTION BALLOTING MATERIAL-VIA AIR MAIL" between the bars. In the upper right corner of each such envelope there shall be printed in a box the words "FREE OF U.S. POSTAGE, INCLUDING AIR MAIL." All printing on the face of such envelopes shall be in black, and there shall be printed in black in the upper left corner of all such ballot envelopes an appropriate inscription for the return address of the sender.

**HISTORY:**

Derived from 1972 Code § 23-9-511 [Codes, 1942, § 3203-204; Laws, 1972, ch. 490, § 204; repealed by Laws, 1986, ch. 495, § 342]; en, Laws, 1986, ch. 495, § 220; Laws, 2000, ch. 592, § 11; Laws, 2010, ch. 446, § 10, eff July 9, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

On July 28, 2000, the United States Attorney General interposed no objection under Section

5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 592.

By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446.

### RESEARCH REFERENCES

**ALR.**
Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**
26 Am. Jur. 2d, Elections § 338.

**CJS.**
29 C.J.S., Elections § 550–560.

## § 23-15-683. Preparation and distribution of ballots for first and second elections; ascertainment by absent voters of candidates in second election.

In any elections, as soon as the deadline for the qualification of candidates has passed, or forty-five (45) days prior to the election, whichever is later, absentee ballots shall be prepared and printed for the elections, and both of said ballots shall have printed thereon the names of all candidates who originally qualify as candidates. However, such ballots shall be printed on paper of different tints or colors and shall be styled so as to show which ballot is to be used for the first election and which ballot is to be used for the second election.

When the proper application is made as is otherwise provided herein, the registrar shall send to the absent voter the proper absent voter ballots for the elections as is otherwise provided herein, and with such ballots there shall be sent also separate official envelopes for the return thereof. No additional ballot shall be thereafter sent to the absent voter for the second election but the absent voter shall ascertain which of the candidates who originally qualified are candidates in the second election and he or she may vote for his choice between them on the second election ballot previously sent him. If an absentee voter shall vote for any candidate on the second election ballot who is not a candidate in the second election, his vote for that office shall be disregarded.

**HISTORY:**
Derived from 1972 Code § 23-9-513 [Codes, 1942, § 3203-204; Laws, 1972, ch. 490, § 204; Laws, 1984, ch. 401, § 1; repealed by Laws, 1986, ch. 495, § 342]; en, Laws, 1986, ch. 495, § 221, eff from and after January 1, 1987.

### RESEARCH REFERENCES

**ALR.**
Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**
26 Am. Jur. 2d, Elections §§ 285-300, 316-341.

**CJS.**
29 C.J.S., Elections §§ 262-288, 330-336.

## § 23-15-685. Distribution of absentee ballot materials upon application.

Within forty-five (45) days next prior to any election upon application first made to the registrar of the county by any absent voter as defined in this subarticle, such person shall be sent an absentee voter ballot of the county of which he is a citizen and resident. The registrar shall send to such absent voter a proper absentee voter ballot containing the names of all candidates who qualify or the proposition to be voted upon in such elections, and with such ballot there shall be sent an official envelope containing upon it in printed form the recitals and data hereinafter required.

**HISTORY:**

Derived from 1972 Code § 23-9-515 [Codes, 1942, § 3203-205; Laws, 1972, ch. 490, § 205; Laws, 1984, ch. 401, § 2; repealed by Laws, 1986, ch. 495, § 342]; en, Laws, 1986, ch. 495, § 222; Laws, 2000, ch. 519, § 3, eff from and after August 7, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

**Editor's Notes —**

On August 7, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 519.

### RESEARCH REFERENCES

**ALR.**

Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 316-341.

**CJS.**

29 C.J.S., Elections § 550–560.

## § 23-15-687. Applications for absentee ballots; preservation of applications.

(1) The registrar shall keep all applications for absentee ballots and shall, within twenty four (24) hours, if possible, send to the absent voter on whose behalf the application is made, the proper affidavit and the proper ballot or ballots applicable to the elections. Such information shall be processed through the Statewide Election Management System.

(2) One (1) application for an absentee ballot shall serve as a request by the applicant for an absentee ballot for:

(a) The next federal general election, including all primary elections associated with the election;

(b) All state and county primary and general elections that occur after the receipt of the application by the registrar through the date of the next federal general election that occurs after the receipt of the application by the registrar.

(3) The registrar shall preserve all applications for absentee ballots for one (1) year as a record to be furnished to any court or other duly constituted authority for inspection or evidence if properly requested.

(4) If the registrar rejects an application for an absentee ballot or denies

a request to register to vote from a uniformed services applicant or an overseas voter, the registrar shall provide the person with the reasons for the rejection.

(5) Any runoff election for a federal election shall be considered a continuation of such federal election.

(6) An absent voter as defined in Section 23-15-673(1) may sign an absentee ballot application by electronic signature. The Secretary of State shall adopt rules necessary to implement this subsection.

**HISTORY:**

Derived from 1972 Code § 23-9-517 [Codes, 1942, § 3203-206; Laws, 1972, ch. 490, § 206; repealed by Laws, 1986, ch. 495, § 342]; en, Laws, 1986, ch. 495, § 223; Laws, 2000, ch. 519, § 4; Laws, 2004, ch. 305, § 16; Laws, 2010, ch. 446, § 3; Laws, 2012, ch. 465, § 2; Laws, 2012, ch. 471, § 4, eff September 6, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Joint Legislative Committee Note —**

This section was amended by Section 2 of Chapter 465, Laws of 2012, effective from and after September 17, 2012, the date it was effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended (approved April 23, 2012). It was also amended by Section 4 of Chapter 471, Laws of 2012, effective from and after September 6, 2012, the date it was effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended (approved April 24, 2012). As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments, contingent on preclearance, as consistent with the legislative intent at the August 16, 2012, meeting of the Committee.

**Editor's Notes —**

On August 7, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights act of 1965 to the amendment of this section by Laws of 2000, ch. 519.

Laws of 2004, ch. 305, § 1 provides:

"SECTION 1. This act shall be known and may be cited as the "Mississippi Help America Vote Act of 2002 Compliance Law."

On July 12, 2004, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2004, ch. 305, § 16.

By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446.

By letter dated September 6, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 471.

By letter dated September 17, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 465.

**Federal Aspects—**

The Help America Vote Act of 2002 is Act of Oct. 29, 2002, P.L. 107-252, formerly appearing as 42 USCS § 15301 et seq., now codified as 52 USCS § 20901 et seq. For full classification of the Act, consult USCS Tables volumes.

## RESEARCH REFERENCES

**ALR.**

Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 337, 340.

**CJS.**

29 C.J.S., Elections § 550–560.

### § 23-15-689. Repealed.

Repealed by Laws, 2000, ch. 519, § 8, effective from and after August 7, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the repeal of this section).

[Derived from 1972 Code § 23-9-519 [Codes, 1942, § 3203-207; Laws, 1972, ch. 490, § 207; repealed by Laws, 1986, ch. 495, § 342]; en, Laws, 1986, ch. 495, § 224, eff from and after January 1, 1987.]

**Editor's Notes —**

Former § 23-15-689 provided the manner in which persons are registered to vote under the Armed Services Absentee Voters Law.

On August 7, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the repeal of this section by Laws of 2000, ch. 519.

### § 23-15-691. Prompt distribution of absentee ballot materials; separation of envelope and other materials; instructions as to notation on envelope and use of ink or indelible pencil.

As soon as possible after the printing of the official absentee ballot for any election, the registrar of the county shall send to any absent voter as defined in this subarticle, who shall, upon proper application, have requested same, the official absentee voter ballot or ballots provided for in this subarticle and the instructions for voting and returning the ballot. If the ballot is sent by mail the registrar shall send a self-addressed envelope or envelopes with the ballot and the instructions.

If the ballot is sent by mail, the gummed flap of the envelope provided for the return of the ballot must be separated by wax paper or other appropriate protective insert from the remaining balloting material. The voting instructions shall require a notation of the facts on the back of the envelope duly signed by the voter.

If applicable, the instructions shall indicate that the ballot shall be marked in ink or indelible pencil.

**HISTORY:**

Derived from 1972 Code § 23-9-521 [Codes, 1942, § 3203-208; Laws, 1972, ch. 490, § 208; repealed by Laws, 1986, ch. 495, § 342]; en, Laws, 1986, ch. 495, § 225; Laws, 2010, ch. 446, § 11, eff July 9, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446.

#### OPINIONS OF THE ATTORNEY GENERAL

A municipal party executive committee may not hear or act on a petition challenging a candidate's qualifications that is filed after the statutory deadline of ten days after the qualifying deadline. 2005 Miss. Op. Att'y Gen. 185.

### RESEARCH REFERENCES

**ALR.**
Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**
26 Am. Jur. 2d, Elections §§ 337, 340.

**CJS.**
29 C.J.S., Elections § 550–560.

## § 23-15-692. Federal Write-In Absentee Ballot.

(1) An absent voter who resides outside the United States, who is a member of the United States Armed Forces or who is a family member of a member of the Armed Forces, and who is a registered voter of the State of Mississippi, may use the Federal Write-In-Absentee Ballot as provided for by 42 USCS 1973ff-2 in general, special, primary and runoff elections for local, state and federal offices.

(2) Upon receipt of a Federal Write-In-Absentee Ballot executed by a person who is a registered voter or whose information on the form is sufficient to register or update the registration of that person, the Federal Write-In-Absentee Ballot shall be considered as an absentee ballot request. Nothing in this subsection shall suspend the voter registration deadlines otherwise provided by law.

**HISTORY:**
Laws, 2000, ch. 519, § 7; Laws, 2010, ch. 446, § 4, eff July 9, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**
The United States Attorney General, by letter dated August 7, 2000, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 519, § 7.

By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446.

42 U.S.C. 1973ff-2, referred to in subsection (1), was transferred to 52 U.S.C. § 20303 by the Office of the Law Revision Counsel as part of an editorial reclassification of the United States Code.

## § 23-15-693. Completion of declaration specified in federal Uniformed and Overseas Citizens Absentee Voting Act.

The absent voter, upon receipt of the absentee ballot, shall complete the declaration specified in the Uniformed and Overseas Citizens Absentee Voting Act, 42 USC Section 1973ff et seq.

**HISTORY:**
Derived from 1972 Code § 23-9-523 [Codes, 1942, § 3203-209; Laws, 1972, ch. 490, § 209; repealed by Laws, 1986, ch. 495, § 342]; en, Laws, 1986, ch. 495, § 226; Laws, 2010, ch. 446, § 5, eff July 9, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**
By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446.

### RESEARCH REFERENCES

**ALR.**
Validity of governmental requirement of oath as applied to voters. 18 A.L.R.2d 268.
Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**
26 Am. Jur. 2d, Elections § 338.

**CJS.**
29 C.J.S., Elections § 550–560.

## § 23-15-695. Repealed.

Repealed by Laws, 2010, ch. 446, § 12, effective July 9, 2010, (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the repeal of this section.)

§ 23-15-695. [Derived from 1972 Code § 23-9-525 [Codes, 1942, § 3203-210; Laws, 1972, ch. 490, § 210; repealed by Laws, 1986, ch. 495, § 342]; en, Laws, 1986, ch. 495, § 227; Laws, 2000, ch. 519, § 5, eff from and after August 7, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section.]

**Editor's Notes —**
Former § 23-15-695 specified those persons authorized to administer and attest oaths for absentee ballots under the Armed Services Absentee Voting Law.

By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the repeal of this section by Laws of 2010, ch. 446.

## § 23-15-697. Mailing of envelope to registrar.

When the absentee ballot has been voted and the envelope sealed, signed and certified to as provided above, the absentee voter shall mail the envelope containing the ballot to the registrar.

**HISTORY:**
Derived from 1972 Code § 23-9-527 [Codes, 1942, § 3203-211; Laws, 1972, ch. 490, § 211; repealed by Laws, 1986, ch. 495, § 342]; en, Laws, 1986, ch. 495, § 228, eff from and after January 1, 1987.

### RESEARCH REFERENCES

**ALR.**
Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**
26 Am. Jur. 2d, Elections § 338.

**CJS.**
29 C.J.S., Elections § 550–560.

## § 23-15-699. Transmission of absentee ballots and balloting materials to absent voters and receipt of voted absentee ballots, federal postcard applications and Federal Write-In-Absentee Ballots by mail, facsimile or electronic mail delivery.

(1) Absent voters who have requested to receive absentee ballots and balloting materials may choose to receive such ballots and balloting materials by mail, facsimile device (FAX) or electronic mail delivery (e-mail). The

Secretary of State shall establish procedures that allow an absent voter to make the choice authorized by this subsection.

(2) Consistent with the choice that the absent voter exercises pursuant to subsection (1) of this section, the registrar shall, in addition to mail, be authorized to use electronic facsimile (FAX) devices and electronic mail delivery (e-mail) to transmit balloting materials and absentee ballots. If the absent voter does not indicate a preference, delivery of such information shall be by mail.

(3) The registrar is authorized to receive by electronic facsimile (FAX) devices and electronic mail delivery (e-mail):

(a) Voted absentee ballots;

(b) Completed federal postcard applications as described in Section 23-15-677, which shall serve to request absentee ballots or to register to vote or to do both simultaneously; and

(c) Completed Federal Write-In-Absentee Ballots as described in Section 23-15-692.

(4) Once the registrar has received a voted absentee ballot pursuant to this section, he shall place the ballot in an absentee ballot envelope designated for absentee ballots under this subarticle and fill out the required information on the envelope. The registrar shall then notate on the envelope that the ballot was received under this section and a signature across the flap of the envelope shall not be required. Except as provided in this section, absentee ballots received under this subsection shall be treated in the same manner as other absentee ballots received under this subarticle.

(5) Access to voted absentee ballots before they are placed in an absentee ballot envelope shall be strictly limited to election officials who must process the ballot and any election official who views the ballots before they are placed in the envelope shall have the duty to protect the secrecy of the ballot choices; however, the failure of an election official to comply with this subsection shall not invalidate the ballot.

(6) Each circuit clerk shall furnish a suitable electronic mail delivery (e-mail) address that can be used to allow absent voters to comply with the provisions of this subarticle. Absentee ballots returned by any absent voter as defined in Section 23-15-673 must be received by the registrar by 7:00 p.m. on the date of the election.

**HISTORY:**

Laws, 1993, ch. 528, § 13; Laws, 2000, ch. 519, § 6; Laws, 2010, ch. 446, § 6; Laws, 2012, ch. 465, § 3, eff September 17, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

The United States Attorney General, by letter August 16, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 1993, ch. 528, § 13.

On August 7, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 519.

By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446.

By letter dated September 17, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 465.

RESEARCH REFERENCES

**ALR.**

Validity of absentee voters' laws, 97 A.L.R.2d 218.

Construction and effect of absentee voters' laws. 97 A.L.R.2d 257.

Residence of students for voting purposes. 44 A.L.R.3d 797.

**Am. Jur.**

26 Am. Jur. 2d Elections, §§ 333-341.

### § 23-15-701. Compliance with Uniformed and Overseas Citizens Absentee Voting Act; Secretary of State granted emergency powers over conduct of elections during armed conflict.

(1) The Secretary of State shall adopt such rules which are necessary and essential to implement this subarticle and to bring the state into compliance with the Uniformed and Overseas Citizens Absentee Voting Act, 42 USCS Section 1973ff et seq. The Secretary of State shall furnish the Legislature with a copy of such rules sixty (60) days after adoption by the Secretary of State.

(2) The Secretary of State may exercise emergency powers concerning absentee voting and registration of military personnel over any election during an armed conflict or other military contingencies involving United States Armed Forces or mobilization of those forces, including state national guard or reserve components. The Secretary of State shall adopt rules describing the emergency powers and the situations in which the powers will be exercised.

**HISTORY:**

Laws, 2000, ch. 519, § 9; Laws, 2010, ch. 446, § 7, eff July 9, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

On August 7, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the enactment of this section by Laws of 2000, ch. 519.

By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 446.

42 U.S.C. Section 1973ff et seq., referred to in subsection (1), was transferred to 52 U.S.C. § 20303, by the Office of the Law Revision Counsel as part of an editorial reclassification of the United States Code.

## SUBARTICLE C.

## ABSENTEE VOTER LAW.

| Sec. | |
|---|---|
| 23-15-711. | Short title. |
| 23-15-713. | Electors qualified to vote as absentees. |
| 23-15-715. | Applications for absentee ballots. |
| 23-15-717. | Completion of application forms. |
| 23-15-719. | Delivery of ballots to applicant; completion of ballots; affidavit; delivery of ballots to registrar. |
| 23-15-721. | Procedures applicable to electors temporarily residing outside county and to electors who are physically disabled; mailing of ballots to registrar. |

### § 23-15-711. Short title.

The title of Sections 23-15-711 through 23-15-721 shall be the Mississippi Absentee Voter Law.

**HISTORY:**

Derived from 1972 Code § 23-9-601 [Codes, 1942, § 3203-301; Laws, 1972, ch. 490, § 301; repealed by Laws, 1986, ch. 495, § 343]; en, Laws, 1986, ch. 495, § 229, eff from and after January 1, 1987.

### § 23-15-713. Electors qualified to vote as absentees.

For the purpose of this subarticle, any duly qualified elector may vote as provided in this subarticle if he be one who falls within the following categories:

(a) Any qualified elector who is a bona fide student, teacher or administrator at any college, university, junior college, high, junior high, or elementary grade school whose studies or employment at such institution necessitates his absence from the county of his voting residence on the date of any primary, general or special election, or the spouse and dependents of said student, teacher or administrator if such spouse or dependent(s) maintain a common domicile, outside of the county of his voting residence, with such student, teacher or administrator.

(b) Any qualified elector who is required to be away from his place of residence on any election day due to his employment as an employee of a member of the Mississippi congressional delegation and the spouse and dependents of such person if he or she shall be residing with such absentee voter away from the county of the spouse's voting residence.

(c) Any qualified elector who is away from his county of residence on election day for any reason.

(d) Any person who has a temporary or permanent physical disability and who, because of such disability, is unable to vote in person without substantial hardship to himself or others, or whose attendance at the voting place could reasonably cause danger to himself or others.

(e) The parent, spouse or dependent of a person with a temporary or permanent physical disability who is hospitalized outside of his county of residence or more than fifty (50) miles distant from his residence, if the parent, spouse or dependent will be with such person on election day.

(f) Any person who is sixty-five (65) years of age or older.

(g) Any member of the Mississippi congressional delegation absent from Mississippi on election day, and the spouse and dependents of such member of the congressional delegation.

(h) Any qualified elector who will be unable to vote in person because he is required to be at work on election day during the times at which the polls will be open.

**HISTORY:**

Derived from 1972 Code § 23-9-603 [Codes, 1942, § 3203-302; Laws, 1972, ch. 490, § 302; repealed by Laws, 1986, ch. 495, § 343]; en, Laws, 1986, ch. 495, § 230; Laws, 1986, ch. 495, § 230; Laws, 1993, ch. 528, § 7, eff from and after August 16, 1993 (the date the United States Attorney General interposed no objection to the amendment of this section).

**Editor's Notes —**

The United States Attorney General never granted preclearance approval, under Section 5 of the Voting Rights Act, to the amendment of this section by Laws of 1987, ch. 499, § 13; therefore, the amendment never went into effect.

The United States Attorney General, by letter August 16, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1993, ch. 528, § 7.

**Cross References —**

Provision that an elector enumerated in this section who applies for an absentee ballot must complete an application form as provided in § 23-15-627, see § 23-15-717.

## JUDICIAL DECISIONS

### ANALYSIS

1.-4. [Reserved for future use.]
5. Relation to other laws.
6. Under former Section 23-9-603.

**1.-4. [Reserved for future use.]**

**5. Relation to other laws.**

Black chairman of a county political party executive committee was guilty of racial discrimination under § 2 of the Voting Rights Act because, inter alia, he disregarded the absentee ballot law, including paying notaries per absentee ballot collected in violation of Miss. Code Ann. § 23-15-713. United States v. Brown, 494 F. Supp. 2d 440, 2007 U.S. Dist. LEXIS 47255 (S.D. Miss. 2007), aff'd, 561 F.3d 420, 2009 U.S. App. LEXIS 4030 (5th Cir. Miss. 2009).

**6. Under former Section 23-9-603.**

Pretrial detainees and convicted misdemeanants who are incarcerated cannot be denied access to ballot, and court will grant preliminary injunction prohibiting denial of plaintiff class, consisting of present and future pretrial detainees and other prisoners incarcerated in Mississippi who are not disenfranchised for conviction of certain felonies, access to absentee ballot. Murphree v. Winter, 589 F. Supp. 374, 1984 U.S. Dist. LEXIS 15965 (S.D. Miss. 1984).

## RESEARCH REFERENCES

**ALR.**

Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**

26 Am. Jur. 2d, Elections § 336.

**CJS.**

29 C.J.S., Elections § 550–560.

**Law Reviews.**

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

## § 23-15-715. Applications for absentee ballots.

Any elector desiring an absentee ballot as provided in this subarticle may secure same if:

(a) Not more than forty-five (45) days nor later than 12:00 noon on the Saturday immediately preceding elections held on Tuesday, the Thursday immediately preceding elections held on Saturday, or the second day immediately preceding the date of elections held on other days, he shall appear in person before the registrar of the county in which he resides, or for municipal elections he shall appear in person before the city clerk of the municipality in which he resides and, when the elector so appears, he shall execute and file an application as provided in Section 23-15-627 and vote by absentee ballot, except that if the ballot has not been printed by forty-five (45) days preceding the election, the elector may appear and file an application anytime before the election. Then the absentee ballot shall be mailed by the circuit clerk to the elector as soon as the ballot has been printed.

(b) Within forty-five (45) days next prior to any election, any elector who cannot comply with paragraph (a) of this section by reason of temporarily residing outside the county, or any person who has a temporary or permanent physical disability, persons who are sixty-five (65) years of age or older, or any person who is the parent, spouse or dependent of a temporarily or permanently physically disabled person who is hospitalized outside of his county of residence or more than fifty (50) miles away from his residence and such parent, spouse or dependent will be with such person on election day, may make application for an absentee ballot by mailing the appropriate application to the registrar. Only persons temporarily residing out of the county of their residence, persons having a temporary or permanent physical disability, persons who are sixty-five (65) years of age or older, or any person who is the parent, spouse or dependent of a temporarily or permanently physically disabled person who is hospitalized outside of his county of residence or more than fifty (50) miles away from his residence, and such parent, spouse or dependent will be with such person on election day, may obtain absentee ballots by mail under the provisions of this subsection and as provided by Section 23-15-713. Applications of persons temporarily residing outside the county shall be sworn to and subscribed before an official who is authorized to administer oaths or other official authorized to witness absentee balloting as provided in this chapter, said application to be accompanied by such verifying affidavits as required by this chapter. The applications of persons having a temporary or permanent physical disability shall not be required to be accompanied by an affidavit but shall be witnessed and signed by a person eighteen (18) years of age or older. The registrar shall send to such absent voter a proper absentee voter ballot within twenty-four (24) hours, or as soon thereafter as the ballots are available, containing the names of all candidates who qualify or the proposition to be voted on in such election, and with such ballot there shall be sent an official envelope containing upon it in printed form the recitals and data hereinafter required.

**HISTORY:**

Derived from 1972 Code § 23-9-605 [Codes, 1942, § 3203-303; Laws, 1972, ch. 490, § 303; repealed by Laws, 1986, ch. 495, § 343]; en, Laws, 1986, ch. 495, § 231; Laws, 1986, ch. 495, § 231; Laws, 1993, ch. 528, § 8, eff from and after August 16, 1993 (the date the United States Attorney General interposed no objection to the amendment of this section).

**Editor's Notes —**

The United States Attorney General never granted preclearance approval, under Section 5 of the Voting Rights Act, to the amendment of this section by Laws of 1987, ch. 499, § 14; therefore, the amendment never went into effect.

The United States Attorney General, by letter August 16, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1993, ch. 528, § 8.

**Cross References —**

Provision that immediately upon completion of an application filed pursuant to paragraph (a) of this section the registrar shall deliver the necessary ballots to the applicant, see § 23-15-719.

Requirement that electors obtaining an absentee ballot under paragraph (b) of this section shall appear before an official authorized to administer oaths or witness absentee balloting, see § 23-15-721.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2.-5. [Reserved for future use.]
6. Under former Section 23-9-605.

**1. In general.**

Government properly established, for purposes of Fed. R. Civ. P. 52, that a political party executive committee and its chairman violated § 2 of the Voting Rights Act, 42 U.S.C.S. § 1973 [now 52 USCS § 10301], by intentionally diluting the voting power of white members of the party by obtaining large numbers of defective absentee ballots from black voters, facilitating improper counting of absentee ballots, and permitting improper assistance of black voters, contrary to the requirements of Miss. Code Ann. §§ 23-15-263, 23-15-715, and 23-15-549. United States v. Brown, 561 F.3d 420, 2009 U.S. App. LEXIS 4030 (5th Cir. Miss. 2009).

Under Mississippi's election statutes, absentee ballots may be executed in one of 2 ways-by appearing in person before the county registrar and executing an application and ballot, or by requesting a ballot by mail and mailing it back. Lewis v. Griffith, 664 So. 2d 177, 1995 Miss. LEXIS 450 (Miss. 1995).

The language in § 23-15-17 which sets forth the manner for applying for and executing absentee ballots is mandatory. Lewis v. Griffith, 664 So. 2d 177, 1995 Miss. LEXIS 450 (Miss. 1995).

The statutes requiring a voter to request an absentee ballot, actually vote his or her own ballot, and place and seal the ballot in the provided envelope are intended to ensure the integrity of absentee ballots. Lewis v. Griffith, 664 So. 2d 177, 1995 Miss. LEXIS 450 (Miss. 1995).

In performing statutory duties with respect to absentee ballots, the county registrar must perform in strict compliance with the statutes. Lewis v. Griffith, 664 So. 2d 177, 1995 Miss. LEXIS 450 (Miss. 1995).

A town clerk's actions were not in compliance with the statutes governing absentee ballots where she hand-delivered 3 absentee ballots to her able-bodied relatives after normal business hours, and the ballots were executed outside the town hall. Lewis v. Griffith, 664 So. 2d 177, 1995 Miss. LEXIS 450 (Miss. 1995).

Sections 23-15-627, 23-15-635, 23-15-715, 23-15-717, and 23-15-719, which designate the procedures for application and completion of absentee ballots, are mandatory rather than directory in nature. Rogers v. Holder, 636 So. 2d 645, 1994 Miss. LEXIS 59 (Miss. 1994).

**2.-5. [Reserved for future use.]**

**6. Under former Section 23-9-605.**

Where a defendant was indicted as a vote fraud principal for aiding, abetting or assisting or causing a named voter to violate the provisions of § 23-9-605(2) [Repealed.], it was not necessary for the state to prove that the named voter had committed a crime, only that the named voter had violated the absentee ballot procedure mandated in § 23-9-605(2) [Repealed]. Van Buren v. State, 498 So. 2d 1224, 1986 Miss. LEXIS 2858 (Miss. 1986).

Pretrial detainees and convicted misdemeanants who are incarcerated cannot be denied access to ballot, and court will grant preliminary injunction prohibiting denial of plaintiff class, consisting of present and future pretrial detainees and other prisoners incarcerated in Mississippi who are not disenfranchised for conviction of certain felonies, access to absentee ballot. Murphree v. Winter, 589 F. Supp. 374, 1984 U.S. Dist. LEXIS 15965 (S.D. Miss. 1984).

**Cited in:** Jefferson Davis County v. Davies, 912 So. 2d 837, 2005 Miss. LEXIS 212 (Miss. 2005).

## OPINIONS OF THE ATTORNEY GENERAL

A circuit clerk may send only the application and upon receipt of the completed application mail the ballot. 2003 Miss. Op. Att'y Gen. 555.

If a circuit clerk sends both the application and the ballot simultaneously and the materials return with errors, the clerk doe not have authority to send a second absentee ballot. 2003 Miss. Op. Att'y Gen. 555.

The circuit clerk does not have any authority to determine the validity of absentee ballots; the clerk is required to place absentee ballots in the ballot boxes upon receipt, and it is the responsibility of the poll workers to determine the validity of the ballots. 2003 Miss. Op. Att'y Gen. 555.

RESEARCH REFERENCES

**ALR.**
Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**
26 Am. Jur. 2d, Elections §§ 316-341.

**CJS.**
29 C.J.S., Elections § 550–560.

## § 23-15-717. Completion of application forms.

Any elector enumerated in Section 23-15-713 applying for an absentee ballot shall complete an application form as provided in Section 23-15-627, and said elector shall fill in the application as is appropriate for his particular situation.

**HISTORY:**
Derived from 1972 Code § 23-9-607 [Codes, 1942, § 3203-304; Laws, 1972, ch. 490, § 304; repealed by Laws, 1986, ch. 495, § 343]; en, Laws, 1986, ch. 495, § 232, eff from and after January 1, 1987.

JUDICIAL DECISIONS

**1. In general.**
Under Mississippi's election statutes, absentee ballots may be executed in one of 2 ways-by appearing in person before the county registrar and executing an application and ballot, or by requesting a ballot by mail and mailing it back. Lewis v. Griffith, 664 So. 2d 177, 1995 Miss. LEXIS 450 (Miss. 1995).

The statutes requiring a voter to request an absentee ballot, actually vote his or her own ballot, and place and seal the ballot in the provided envelope are intended to ensure the integrity of absentee ballots. Lewis v. Griffith, 664 So. 2d 177, 1995 Miss. LEXIS 450 (Miss. 1995).

Sections 23-15-627, 23-15-635, 23-15-715, 23-15-717, and 23-15-719, which designate the procedures for application and completion of absentee ballots, are mandatory rather than directory in nature. Rogers v. Holder, 636 So. 2d 645, 1994 Miss. LEXIS 59 (Miss. 1994).

RESEARCH REFERENCES

**ALR.**
Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**
26 Am. Jur. 2d, Elections § 337.

**CJS.**
29 C.J.S., Elections §§ 543–560.

## § 23-15-719. Delivery of ballots to applicant; completion of ballots; affidavit; delivery of ballots to registrar.

(1) Immediately upon completion of an application filed pursuant to the provisions of paragraph (a) of Section 23-15-715, the registrar shall deliver the necessary ballots to the applicant. The registrar shall identify the applicant by requiring him to present identification as required by Section 23-15-563, and shall then deliver the ballots to the applicant by mail or to the applicant in the registrar's office. The registrar shall not personally hand deliver ballots to voters, unless he delivers the ballots in the office of the registrar. The elector shall fill in his ballot in secret. After the applicant has properly marked the ballot and properly folded it, he shall deposit it in the envelope furnished him by the registrar.

After he has sealed the envelope, he shall subscribe and swear to an affidavit in the following form, which shall be printed on the back of the envelope containing the applicant's ballot:

"STATE OF MISSISSIPPI
COUNTY OF ________

I, ________, do solemnly swear that this envelope contains the ballot marked by me indicating my choice of the candidates or propositions to be submitted at the election to be held on the ________ day of ________, 2________, and I hereby authorize the registrar to place this envelope in the ballot box on my behalf, and I further authorize the election managers to open this envelope and place my ballot among the other ballots cast before such ballots are counted, and record my name on the poll list as if I were present in person and voted.

I further swear that I marked the enclosed ballot in secret.

________________________________________
(Signature of voter)

SWORN TO AND SUBSCRIBED before me, ________, this the ________ day of________, 2________.

(Registrar) ________________
(Registrar)"

After the completion of the requirements of this section, the elector shall deliver the envelope containing the ballot to the registrar.

(2) If the voter has received assistance in marking his ballot, the person providing the assistance shall complete the following form which shall be printed on the back of the envelope containing the applicant's ballot:

"CERTIFICATE OF PERSON PROVIDING VOTER ASSISTANCE

(To be completed only if the voter has received assistance in marking the enclosed ballot.) I hereby certify that the above-named voter declared to me that he or she is blind, temporarily or permanently physically disabled, or cannot read or write, and that the voter requested that I assist the voter in marking the enclosed absentee ballot. I hereby certify that the ballot preferences on the enclosed ballot are those communicated by the voter to me, and that I have marked the enclosed ballot in accordance with the voter's instructions.

________________________________________
Signature of person providing assistance

________________________________________
Printed name of person providing assistance

________________________________________
Address of person providing assistance

________________________________________
Date and time assistance provided

______________________________________

Family relationship to voter (if any)"

(3) The envelope used pursuant to this section shall not contain the form prescribed by Section 23-15-635 and shall have printed on the flap on the back of the envelope in bold print and in a distinguishing color, the following: **"YOUR VOTE WILL BE REJECTED AND NOT COUNTED IF THIS ENVELOPE IS NOT SIGNED ACROSS THE FLAP OF THIS ENVELOPE BY YOU AND AN ATTESTING WITNESS."**

**HISTORY:**

Derived from 1972 Code § 23-9-611 [Codes, 1942, § 3203-306; Laws, 1972, ch. 490, § 306; repealed by Laws, 1986, ch. 495, § 343]; en, Laws, 1986, ch. 495, § 233; Laws, 1999, ch. 420, § 5; Laws, 2008, ch. 528, § 13; Laws, 2012, ch. 526, § 8, eff August 5, 2013 (the date of the United States Attorney General's response to the submission of this section under Section 5 of the Voting Rights Act of 1965).

**Editor's Notes —**

On June 17, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 420, § 5.

On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2008, ch. 528.

The effective date of the bill that amended this section, Chapter 526, Laws of 2012 (House Bill No. 921), is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bill was submitted to the United States Attorney General under Section 5, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. Chapter 526 was submitted to the United States Attorney General before the *Shelby County* decision was rendered. In a letter dated August 5, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 526 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 526, so Chapter 526 became effective on the date of the response letter from the United States Attorney General, August 5, 2013.

**Cross References —**

Provision that the envelope used by absentee voters who do not use the registrar of their county of residence as an attesting witness shall not contain the form prescribed by this section, see § 23-15-635.

Delivery of absentee ballots in person when absentee voter receives absentee ballot pursuant to this section, see § 23-15-735.

## JUDICIAL DECISIONS

**1. In general.**

Under Mississippi's election statutes, absentee ballots may be executed in one of 2 ways-by appearing in person before the county registrar and executing an application and ballot, or by requesting a ballot by mail and mailing it back. Lewis v. Griffith, 664 So. 2d 177, 1995 Miss. LEXIS 450 (Miss. 1995).

The statutes requiring a voter to request an absentee ballot, actually vote his or her own ballot, and place and seal the ballot in the provided envelope are intended to ensure the integrity of absentee ballots. Lewis v. Griffith, 664 So. 2d 177, 1995 Miss. LEXIS 450 (Miss. 1995).

In performing statutory duties with respect to absentee ballots, the county registrar must perform in strict compliance with the statutes. Lewis v. Griffith, 664 So. 2d 177, 1995 Miss. LEXIS 450 (Miss. 1995).

A town clerk's actions were not in compliance with the statutes governing absentee ballots where she hand-delivered 3 absentee ballots to her able-bodied relatives after normal business hours, and the ballots were executed outside the town hall. Lewis v. Griffith, 664 So. 2d 177, 1995 Miss. LEXIS 450 (Miss. 1995).

Sections 23-15-627, 23-15-635, 23-15-715, 23-15-717, and 23-15-719, which designate the procedures for application and completion of absentee ballots, are mandatory rather than directory in nature. Rogers v. Holder, 636 So. 2d 645, 1994 Miss. LEXIS 59 (Miss. 1994).

**Cited in:** Jefferson Davis County v. Davies, 912 So. 2d 837, 2005 Miss. LEXIS 212 (Miss. 2005).

## OPINIONS OF THE ATTORNEY GENERAL

No authority can be found that would allow a county registrar to open the ballot box and retrieve an absentee ballot cast in one party primary election and then allow the voter to cast another ballot in another party primary. 2003 Miss. Op. Att'y Gen. 363.

A voter who cast an absentee ballot in one party's primary may not lawfully cast a regular ballot in another party's primary. 2003 Miss. Op. Att'y Gen. 363.

The list of voters who vote by absentee ballot is a public record. Therefore, it is permissible to furnish the election managers in one party's primary with a list of individuals who cast absentee ballots in another party's primary. 2003 Miss. Op. Att'y Gen. 363.

## RESEARCH REFERENCES

**ALR.**

Validity of governmental requirement of oath as applied to voters. 18 A.L.R.2d 268.

Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 338, 340.

**CJS.**

29 C.J.S., Elections § 550–560.

## § 23-15-721. Procedures applicable to electors temporarily residing outside county and to electors who are physically disabled; mailing of ballots to registrar.

(1) Electors temporarily residing outside the county and obtaining an absentee ballot under the provisions of paragraph (b) of Section 23-15-715 shall appear before any official authorized to administer oaths or other official authorized to witness absentee balloting as provided in this chapter. The elector shall exhibit to such official his absentee ballot unmarked and thereupon proceed in secret to fill in his ballot. After the elector has properly marked the ballot and properly folded it, he shall deposit it in the envelope furnished him. After he has sealed the envelope he shall deliver it to the official before whom he is appearing and shall subscribe and swear to the elector's certificate provided for in Section 23-15-635, which affidavit shall be printed on the back of the envelope as provided for in Section 23-15-635.

(2) Electors who are temporarily or permanently physically disabled shall sign the elector's certificate and the certificate of attesting witness shall be signed by any person eighteen (18) years of age or older.

(3) After the completion of the requirements of this section, the elector shall mail the envelope containing the ballot to the registrar in the county wherein said elector is qualified to vote. Except as otherwise provided by Section 23-15-699 and excluding presidential ballots as provided for in Sections 23-15-731 and 23-15-733, the ballots must be received by the registrar prior to 5:00 p.m. on the day preceding the election to be counted.

**HISTORY:**

Derived from 1972 Code § 23-9-613 [Codes, 1942, § 3203-307; Laws, 1972, ch. 490, § 307; repealed by Laws, 1986, ch. 495, § 343]; en, Laws, 1986, ch. 495, § 234; Laws, 2012, ch. 465, § 5, eff September 17, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

By letter dated September 17, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 465.

**Cross References —**

Residency of prisoner as affected by incarceration in facility of Department of Corrections, see § 47-1-63.

**RESEARCH REFERENCES**

**ALR.**

Validity of governmental requirement of oath as applied to voters. 18 A.L.R.2d 268.

Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 338, 339.

**CJS.**

29 C.J.S., Elections §§ 543–560.

**Law Reviews.**

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

## SUBARTICLE D.

## PROVISION APPLICABLE TO PRESIDENTIAL ELECTION.

Sec.

23-15-731. General provisions.
23-15-733. Disposition of ballots received after election.
23-15-735. Delivery of absentee ballots to voters in person.

### § 23-15-731. General provisions.

Any presidential absentee ballots received by the registrar subsequent to the delivery of ballot boxes to the election managers and prior to the time for the closing of the polls on election day shall be retained by the registrar and shall be delivered, together with the applications of the qualified absentee elector to an election official designated to receive them. The registrar shall receive a receipt from the designated election official for all such ballots and applications delivered. The designated election officials shall, upon the canvassing of the returns, count such ballots as if delivered to the proper precincts and such ballots shall be considered valid for all purposes as if they had been actually deposited in the proper precinct ballot boxes. The appropriate election officials shall examine the affidavit of each envelope. If the officials are satisfied that the affidavit is sufficient and that the absentee voter is otherwise qualified to vote, an official shall announce the name of the voter and shall give any person present an opportunity to challenge in like manner and for the same cause as the voter could have been challenged had he presented himself personally in such precinct to vote. The ineligibility of the voter to vote by absentee ballot shall be a ground for a challenge. The officials shall consider any absentee voter challenged when a person has previously filed a written challenge of such voter's right to vote. The election officials shall handle any such challenge in the same manner as other challenged ballots are handled, and if the challenge is not affirmed, the officials shall then open the envelope. The officials shall then open the envelope in such manner as not to destroy the affidavit printed thereon and shall deposit the ballot marked "OFFICIAL ABSENTEE BALLOT," in a ballot box reserved for absentee ballots. The commissioners shall endorse on their pollbooks a proper notation to indicate that the absentee voter has voted in such election by absentee ballot.

**HISTORY:**

Derived from § 23-11-15 [Codes, 1942, § 3203-105; Laws, 1972, ch. 490, § 105; repealed by Laws, 1986, ch. 495, § 345]; en, Laws, 1986, ch. 495, § 235, eff from and after January 1, 1987.

**Cross References —**

Exclusion of presidential ballots from requirement that absentee ballots received by mail must be received by the registrar by 5:00 p.m. on the day preceding the election, see § 23-15-637.

**RESEARCH REFERENCES**

**ALR.**

Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 316-341.

**CJS.**

29 C.J.S., Elections §§ 540–560, 562, 563, 570–572.

## § 23-15-733. Disposition of ballots received after election.

The registrar shall keep safely and unopened all official presidential absentee ballots which are received subsequent to the election. Upon receipt of such ballot, the registrar shall write the day and hour of the receipt of the ballot on its envelope. All such absentee ballots returned to the registrar shall be safely kept unopened by the registrar for the period of time required for the preservation of ballots used in the election, and shall then, without being opened, be destroyed in like manner as the used ballots of the election. Such information shall be processed through the Statewide Election Management System.

**HISTORY:**

Derived from 1972 Code § 23-11-7 [Codes, 1942, § 3203-105; Laws, 1972, ch. 490, § 105; repealed by Laws, 1986, ch. 495, § 345]; en, Laws, 1986, ch. 495, § 236; Laws, 2012, ch. 471, § 5, eff September 6, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

By letter dated September 6, 2012, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2012, ch. 471.

**Cross References —**

Exclusion of presidential ballots from requirement that absentee ballots received by mail must be received by the registrar by 5:00 p.m. on the day preceding the election, see § 23-15-637.

RESEARCH REFERENCES

**ALR.**
Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**
26 Am. Jur. 2d, Elections §§ 239-247.

**CJS.**
29 C.J.S., Elections §§ 543–560.

### § 23-15-735. Delivery of absentee ballots to voters in person.

Absentee ballots shall not be delivered in person to an absentee voter or to any other person except when an absentee voter shall have properly received an absentee ballot pursuant to Section 23-15-719.

**HISTORY:**
Laws, 1993, ch. 528, § 14, eff from and after August 16, 1993 (the date the United States Attorney General interposed no objection to the addition of this section).

**Editor's Notes —**
Laws of 1993, ch. 528, § 19, provides as follows:

"SECTION 19. If any section, paragraph, sentence, clause, phrase or any part of this act is declared to be unconstitutional or void, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect."

The United States Attorney General, by letter August 16, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 1993, ch. 528, § 14.

RESEARCH REFERENCES

**ALR.**
Validity of absentee voters' laws, 97 A.L.R.2d 218.
Construction and effect of absentee voters' laws. 97 A.L.R.2d 257.
Residence of students for voting purposes. 44 A.L.R.3d 797.

**Am. Jur.**
26 Am. Jur. 2d Elections, §§ 333-341.

## SUBARTICLE E.

## GENERAL PROVISIONS.

Sec.
23-15-751. Penalties for offenses by registrar or commissioner of elections or officers taking affidavits.
23-15-753. Penalties for vote fraud.
23-15-755. Applicability of Sections 23-15-621 through 23-15-735.

### § 23-15-751. Penalties for offenses by registrar or commissioner of elections or officers taking affidavits.

If any registrar or commissioner of elections shall refuse or neglect to perform any of the duties prescribed by Sections 23-15-621 through 23-15-735, or shall knowingly permit any person to sign a false affidavit or otherwise knowingly permit any person to violate Sections 23-15-621 through 23-15-735, or shall violate any of the provisions thereof, or if any officer taking the affidavits as provided in said acts shall make any false statement in his certificate thereto attached, he shall, upon conviction, be deemed guilty of a crime and shall be punished by a fine not exceeding One Thousand Dollars ($1,000.00) or by imprisonment in the Penitentiary not exceeding one (1) year, and shall be removed from office.

**HISTORY:**

Derived from 1972 Code § 23-9-701 [Codes, 1942, § 3203-601; Laws, 1972, ch. 490, § 601; repealed by Laws, 1986, ch. 495, § 344]; en, Laws, 1986, ch. 495, § 237; Laws, 1993, ch. 528, § 15, eff from and after August 16, 1993 (the date the United States Attorney General interposed no objection to the amendment of this section).

**Editor's Notes —**

The United States Attorney General, by letter August 16, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1993, ch. 528, § 15.

### RESEARCH REFERENCES

**ALR.**

Validity of absentee voters' laws. 97 A.L.R.2d 218.

Reviewability before trial of order denying qualified immunity to defendant sued in state court under 42 USCS § 1983. 49 A.L.R.5th 717.

Actionability, under 42 USCS § 1983, of claim arising out of maladministration of election. 66 A.L.R. Fed. 750.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 338, 339, 348-355, 449-478.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 121-124 (misconduct of officials).

**CJS.**

29 C.J.S., Elections §§ 575, 578, 579.

**Lawyers' Edition.**

Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L. Ed. 2d 1960.

## § 23-15-753. Penalties for vote fraud.

(1) Any person who willfully, unlawfully and feloniously procures, seeks to procure, or seeks to influence the vote of any person voting by absentee ballot, by the payment of money, the promise of payment of money, or by the delivery of any other item of value or promise to give the voter any item of value, or by promising or giving the voter any favor or reward in an effort to influence his vote, or any person who aids, abets, assists, encourages, helps, or causes any person voting an absentee ballot to violate any provision of law pertaining to absentee voting, or any person who sells his vote for money, favor, or reward, has been paid or promised money, a reward, a favor or favors, or any other item of value, or any person who shall willfully swear falsely to any affidavit provided for in Sections 23-15-621 through 23-15-735, shall be guilty of the crime of "vote fraud" and, upon conviction, shall be sentenced to pay a fine of not less than Five Hundred Dollars ($500.00) nor more than Five Thousand Dollars ($5,000.00), or by imprisonment in the county jail for no more than one (1) year, or by both fine and imprisonment, or by being sentenced to the State Penitentiary for not less than one (1) year nor more than five (5) years.

(2) It shall be unlawful for any person who pays or compensates another person for assisting voters in marking their absentee ballots to base the pay or compensation on the number of absentee voters assisted or the number of absentee ballots cast by persons who have received the assistance. Any person who violates this section, upon conviction shall, be fined not less than One

Thousand Dollars ($1,000.00) nor more than Five Thousand Dollars ($5,000.00), or imprisoned in the Penitentiary not less than one (1) year nor more than five (5) years, or both.

**HISTORY:**

Derived from 1972 Code § 23-9-703 [Codes, 1942, § 3203-602; Laws, 1972, ch. 490, § 602; repealed by Laws, 1986, ch. 495, § 344]; en, Laws, 1986, ch. 495, § 238; Laws, 1993, ch. 528, § 16; Laws, 1999, ch. 420, § 6, eff from and after June 17, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

The United States Attorney General, by letter August 16, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1993, ch. 528, § 16.

On June 17, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 420, § 6.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2.-5. [Reserved for future use.]
6. Under former section 29-3-703.

**1. In general.**

The statute does not permit a person convicted of voter fraud to be subjected to both a fine and a term of imprisonment. Sewell v. State, 721 So. 2d 129, 1998 Miss. LEXIS 521 (Miss. 1998).

**2.-5. [Reserved for future use.]**

**6. Under former section 29-3-703.**

The requirements of the accessories to felonies before the fact statute, § 97-1-3, are not incorporated into § 23-9-703 [Repealed.] but, instead, § 23-9-703 [Repealed.] creates a separate offense of vote fraud. Van Buren v. State, 498 So. 2d 1224, 1986 Miss. LEXIS 2858 (Miss. 1986).

## RESEARCH REFERENCES

**ALR.**

Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 350, 359, 445-477.

**CJS.**

29 C.J.S., Elections §§ 575, 576, 578–583

**Lawyers' Edition.**

Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L. Ed. 2d 1960.

Criminal liability, under 18 USCS §§ 241, 242, for depriving, or conspiring to deprive, a person of his civil rights-supreme court cases. 20 L. Ed. 2d 1454.

## § 23-15-755. Applicability of Sections 23-15-621 through 23-15-735.

All of the provisions of Sections 23-15-621 through 23-15-735 shall be applicable, insofar as possible, to municipal, primary, preferential, general and special elections, and wherever herein any duty is imposed or any power or authority is conferred upon the county registrar, county election commissioners, or county executive committee with reference to a state and county election, such duty shall likewise be imposed and such power and authority shall likewise be conferred upon the municipal registrar, municipal election commission or municipal executive committee with reference to any municipal election. Any duty, obligation or responsibility imposed upon the registrar or upon the election commissioners, when applicable, shall likewise be conferred upon and devolved upon the appropriate party, executive committee or officials in any party primary.

**HISTORY:**

Derived from 1972 Code § 23-9-705 [Codes, 1942, § 3203-603; Laws, 1972, ch. 490, § 603; repealed by Laws, 1986, ch. 495, § 344]; en, Laws, 1986, ch. 495, § 239; Laws, 1993, ch. 528, § 17, eff from and after August 16, 1993 (the date the United States Attorney General interposed no objection to the amendment of this section).

**Editor's Notes —**

The United States Attorney General, by letter August 16, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1993, ch. 528, § 17.

**RESEARCH REFERENCES**

**ALR.**

Validity of absentee voters' laws. 97 A.L.R.2d 218.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 316-341.

**CJS.**

29 C.J.S., Elections §§ 543–560.

**Lawyers' Edition.**

Criminal liability, under 18 USCS §§ 241, 242, for depriving, or conspiring to deprive, a person of his civil rights-supreme court cases. 20 L. Ed. 2d 1454.

# ARTICLE 21.

# PRESIDENTIAL AND VICE-PRESIDENTIAL ELECTORS.

Subarticle A. Selection of Presidential Electors by Political Parties. .. 23-15-771
Subarticle B. Selection of Presidential Electors at General Election. .. 23-15-781

## SUBARTICLE A.

## SELECTION OF PRESIDENTIAL ELECTORS BY POLITICAL PARTIES.

Sec.

23-15-771. Selection of electors at state convention for place on primary election ballot.

### § 23-15-771. Selection of electors at state convention for place on primary election ballot.

At the state convention, a slate of electors composed of the number of electors allotted to this state, which said electors announce a clearly expressed design and purpose to support the candidates for President and Vice-President of the national political party with which the said party of this state has had an affiliation and identity of purpose heretofore, shall be designated and selected for a place upon the primary election ballot to be held as herein provided.

**HISTORY:**

Laws, 1986, ch. 495, § 240, eff from and after January 1, 1987.

**Joint Legislative Committee Note —**

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section. The word "alloted" was changed to "allotted." The Joint Committee ratified the correction at its December 3, 1996.

**Cross References —**

Applicability of this section to political parties registered pursuant to certain provisions of Article 35 of this chapter, see § 23-15-1069.

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 218-251, 266.

**CJS.**

29 C.J.S., Elections §§ 304–375.

**Law Reviews.**

Stavis, A century of struggle for black enfranchisement in Mississippi: From the Civil War to the congressional challenge of 1965-and beyond. 57 Miss. L. J. 591, December, 1987.

Rhodes, Enforcing the Voting Rights Act in Mississippi through litigation. 57 Miss. L. J. 705, December, 1987.

Mississippi Election Code of 1986, 56 Miss L. J. 535, December 1986.

# SUBARTICLE B.

# SELECTION OF PRESIDENTIAL ELECTORS AT GENERAL ELECTION.

Sec.

23-15-781. Selection of electors of President and Vice-President by qualified electors of state at large.
23-15-783. Applicability of laws regulating general elections.
23-15-785. Certificates of nomination and nominating petitions; preparation of official ballots.
23-15-787. Notification of persons elected.
23-15-789. Meeting of electors; voting; appointments to fill vacancies.
23-15-791. Allowance to electors for travel and for attendance.

## § 23-15-781. Selection of electors of President and Vice-President by qualified electors of state at large.

The number of electors of President and Vice-President of the United States to which this state may be entitled, shall be chosen by the qualified electors of the state at large, on the first Tuesday after the first Monday of November in the year in which an election of President and Vice-President shall occur.

**HISTORY:**

Derived from 1972 Code § 23-5-207 [Codes, Hutchinson's 1848, ch. 7, art 4 (1); 1857, ch. 4, art 39; 1871, § 362; 1880, § 165; 1892, § 3699; 1906, § 4206; Hemingway's 1917, § 6842; 1930, § 6268; 1942, § 3297; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 241, eff from and after January 1, 1987.

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 302 et seq.
77 Am. Jur. 2d, United States § 17.

**CJS.**

29 C.J.S., Elections §§ 308, 309 et seq.
91 C.J.S., United States § 44.

**Law Reviews.**

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

## § 23-15-783. Applicability of laws regulating general elections.

The laws regulating the general elections shall in all respects apply to and govern elections of electors of President and Vice-President.

**HISTORY:**

Derived from 1972 Code § 23-5-209 [Codes, Hutchinson's 1848, ch. 7, art 4 (2); 1857, ch. 4, art 40; 1871, § 380; 1880, § 166; 1892, § 3700; 1906, § 4207; Hemingway's 1917, § 6843; 1930, § 6269; 1942, § 3298; Laws, 1944, Ex ch. 2; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 242, eff from and after January 1, 1987.

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 302 et seq.
77 Am. Jur. 2d, United States § 17.

**CJS.**

29 C.J.S., Elections §§ 308, 309 et seq.
91 C.J.S., United States § 44.

**Law Reviews.**

Mississippi and the Voting Rights Act: 1965-1982. 52 Miss. L. J. 803, December 1982.

## § 23-15-785. Certificates of nomination and nominating petitions; preparation of official ballots.

(1) When presidential electors are to be chosen, the Secretary of State of Mississippi shall certify to the circuit clerks of the several counties the names of all candidates for President and Vice President who are nominated by any national convention or other like assembly of any political party or by written petition signed by at least one thousand (1,000) qualified voters of this state.

(2) The certificate of nomination by a political party convention must be signed by the presiding officer and secretary of the convention and by the chairman of the state executive committee of the political party making the nomination. Any nominating petition, to be valid, must contain the signatures as well as the addresses of the petitioners. The certificates and petitions must be filed with the State Board of Election Commissioners by filing them in the Office of the Secretary of State by 5:00 p.m. not less than sixty (60) days previous to the day of the election.

(3) Each certificate of nomination and nominating petition must be accompanied by a list of the names and addresses of persons, who shall be qualified voters of this state, equal in number to the number of presidential electors to be chosen. Each person so listed shall execute the following statement which shall be attached to the certificate or petition when it is filed with the State Board of Election Commissioners: "I do hereby consent and do hereby agree to serve as elector for President and Vice President of the United States, if elected to that position, and do hereby agree that, if so elected, I shall cast my ballot as such for ________ for President and ________ for Vice President of the United States" (inserting in said blank spaces the respective names of the persons named as nominees for said respective offices in the certificate to which this statement is attached).

(4) The State Board of Election Commissioners and any other official charged with the preparation of official ballots shall place on such official ballots the words "PRESIDENTIAL ELECTORS FOR (here insert the name of the candidate for President, the word 'AND' and the name of the candidate for Vice President)" in lieu of placing the names of such presidential electors on the official ballots, and a vote cast therefor shall be counted and shall be in all respects effective as a vote for each of the presidential electors representing those candidates for President and Vice President of the United States. In the case of unpledged electors, the State Board of Election Commissioners and any other official charged with the preparation of official ballots shall place on such official ballots the words "UNPLEDGED ELECTOR(S) (here insert the name(s) of individual unpledged elector(s) if placed upon the ballot based upon a petition granted in the manner provided by law stating the individual name(s) of the elector(s) rather than a slate of electors)."

**HISTORY:**

Derived from 1972 Code § 23-5-210 [Laws, 1982, ch. 478, § 1; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 243; Laws, 2010, ch. 373, § 1, eff June 9, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

By letter dated June 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 373, § 1.

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 199-265.
77 Am. Jur. 2d, United States § 17.

**CJS.**

29 C.J.S., Elections §§ 294–433.
91 C.J.S., United States § 44.

## § 23-15-787. Notification of persons elected.

The Secretary of State shall, immediately after ascertaining the result, transmit by mail a notice, in writing, to the persons elected.

**HISTORY:**

Derived from 1972 Code § 23-5-211 [Codes, Hutchinson's 1848, ch. 7, art 4 (6); 1857, ch. 4, art 41; 1871, § 381; 1880, § 167; 1892, § 3701; 1906, § 4208; Hemingway's 1917, § 6844; 1930, § 6270; 1942, § 3299; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 244, eff from and after January 1, 1987.

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 358 et seq.
77 Am. Jur. 2d, United States § 17.

**CJS.**

91 C.J.S., United States § 44.

## § 23-15-789. Meeting of electors; voting; appointments to fill vacancies.

The electors chosen shall meet at the seat of government of the state on the first Monday after the second Wednesday in December next following their election, and shall there give their votes for President and Vice-President of the United States, and shall make return thereof agreeably to the laws of the

United States; and should any elector so chosen fail to attend and give his vote, the other electors attending shall appoint some person or persons to fill the vacancy or vacancies, who shall attend and vote as electors; and such appointment shall be forthwith reported to the Secretary of State.

**HISTORY:**

Derived from 1972 Code § 23-5-213 [Codes, Hutchinson's 1848, ch. 7, art 4 (4); 1857, ch. 4, art 42; 1871, § 382; 1880, § 168; 1892, § 3702; 1906, § 4209; Hemingway's 1917, § 6845; 1930, § 6271; 1942, § 3300; Laws, 1902, ch. 105; Laws, 1944, Ex ch. 4; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 245, eff from and after January 1, 1987.

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 302 et seq.
77 Am. Jur. 2d, United States § 17.

**CJS.**

29 C.J.S., Elections §§ 308, 309 et seq.
91 C.J.S., United States § 44.

### § 23-15-791. Allowance to electors for travel and for attendance.

Each elector shall be allowed the sum of Four Dollars ($4.00) for every twenty (20) miles of travel, to be estimated by the usual land route, in going from his home to and returning from the seat of government to give his vote, and Four Dollars ($4.00) for every day he shall attend there as an elector, to be paid by the State Treasurer, on the warrant of the auditor.

**HISTORY:**

Derived from 1972 Code § 23-5-215 [Codes, Hutchinson's 1848, ch. 7, art 4 (5); 1857, ch. 4, art 43; 1880, § 169; 1892, § 3703; 1906, § 4210; Hemingway's 1917, § 6846; 1930, § 6272; 1942, § 3301; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 246, eff from and after January 1, 1987.

**Editor's Notes —**

Section 7-7-2, as added by Laws of 1984, chapter 488, § 90, and amended by Laws of 1985, chapter 455, § 14, Laws of 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration."

## ARTICLE 23.

## DISCLOSURE OF CAMPAIGN FINANCES.

Sec.

23-15-801. Definitions.
23-15-803. Registration of political committees; administrative penalties for failure to comply.
23-15-805. Filing of reports; public inspection and preservation of reports.
23-15-807. Reporting requirements; contributions and disbursements of candidates and political committees.

Sec.
23-15-809. Statements by persons other than political committees; filing; indices of expenditures.
23-15-811. Penalties.
23-15-813. Civil penalty for failure to file campaign finance disclosure report; notice to candidate of failure to file; assessment of penalty by Mississippi Ethics Commission; hearing; appeal.
23-15-815. Administrative provisions; duties of Secretary of State.
23-15-817. Compilation and dissemination of list of candidates failing to meet filing requirements.
23-15-819. Campaign contributions or expenditures of money or other things of value by foreign nationals prohibited.
23-15-821. Personal use of campaign contributions by elected public officeholders or candidates for public office prohibited; definitions; disposition of unused funds; penalties.

**Comparable Laws from other States —**

Alabama Code, §§ 17-5-1 et seq. and 36-25-6.

Arkansas Code Annotated, §§ 7-6-201 through 7-6-227.

Georgia Code Annotated, §§ 21-5-30 et seq.

Louisiana Revised Statutes Annotated, §§ 18:1481 et seq.

Tennessee Code Annotated, §§ 2-10-101 et seq.

Texas Election Code, §§ 251.001 et seq., 258.001 et seq.

**Federal Aspects—**

Federal election campaigns – disclosure of federal campaign funds, see 52 USCS §§ 30141 et seq.

Federal election campaigns – general provisions, see 52 USCS §§ 30101 et seq.

## § 23-15-801. Definitions.

(a) "Election" means a general, special, primary or runoff election.

(b) "Candidate" means an individual who seeks nomination for election, or election, to any elective office other than a federal elective office. For purposes of this article, an individual shall be deemed to seek nomination for election, or election:

(i) If the individual has received contributions aggregating in excess of Two Hundred Dollars ($200.00) or has made expenditures aggregating in excess of Two Hundred Dollars ($200.00) or for a candidate for the Legislature or any statewide or state district office, by the qualifying deadlines specified in Sections 23-15-299 and 23-15-977, whichever occurs first; or

(ii) If the individual has given his or her consent to another person to receive contributions or make expenditures on behalf of the individual and if the other person has received contributions aggregating in excess of Two Hundred Dollars ($200.00) during a calendar year, or has made expenditures aggregating in excess of Two Hundred Dollars ($200.00) during a calendar year.

(c) "Political committee" means any committee, party, club, association, political action committee, campaign committee or other groups of persons or affiliated organizations that receives contributions aggregating in excess of Two Hundred Dollars ($200.00) during a calendar year or that makes expenditures aggregating in excess of Two Hundred Dollars ($200.00) during a calendar year for the purpose of influencing or attempting to influence the action of voters for or against the nomination for election, or election, of one or more candidates, or balloted measures. Political committee shall, in addition, include each political party registered with the Secretary of State.

(d) "Affiliated organization" means any organization that is not a political committee, but that directly or indirectly establishes, administers or financially supports a political committee.

(e)(i) "Contribution" shall include any gift, subscription, loan, advance or deposit of money or anything of value made by any person or political committee for the purpose of influencing any election for elective office or balloted measure;

(ii) "Contribution" shall not include the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee; or the cost of any food or beverage for use in any candidate's campaign or for use by or on behalf of any political committee of a political party;

(iii) "Contribution to a political party" includes any gift, subscription, loan, advance or deposit of money or anything of value made by any person, political committee, or other organization to a political party and to any committee, subcommittee, campaign committee, political committee and other groups of persons and affiliated organizations of the political party;

(iv) "Contribution to a political party" shall not include the value of services provided without compensation by any individual who volunteers on behalf of a political party or a candidate of a political party.

(f)(i) "Expenditure" shall include any purchase, payment, distribution, loan, advance, deposit, gift of money or anything of value, made by any person or political committee for the purpose of influencing any balloted measure or election for elective office; and a written contract, promise, or agreement to make an expenditure;

(ii) "Expenditure" shall not include any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless the facilities are owned or controlled by any political party, political committee, or candidate; or nonpartisan activity designed to encourage individuals to vote or to register to vote;

(iii) "Expenditure by a political party" includes 1. any purchase, payment, distribution, loan, advance, deposit, gift of money or anything of value, made by any political party and by any contractor, subcontractor, agent, and consultant to the political party; and 2. a written contract, promise, or agreement to make such an expenditure.

(g) The term "identification" shall mean:

(i) In the case of any individual, the name, the mailing address, and the occupation of such individual, as well as the name of his or her employer; and

(ii) In the case of any other person, the full name and address of the person.

(h) The term "political party" shall mean an association, committee or organization which nominates a candidate for election to any elective office whose name appears on the election ballot as the candidate of the association, committee or organization.

(i) The term "person" shall mean any individual, family, firm, corporation, partnership, association or other legal entity.

(j) The term "independent expenditure" shall mean an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate that is made without cooperation or consultation with any candidate or any authorized committee or agent of the candidate, and that is not made in concert with or at the request or suggestion of any candidate or any authorized committee or agent of the candidate.

(k) The term "clearly identified" shall mean that:

(i) The name of the candidate involved appears; or

(ii) A photograph or drawing of the candidate appears; or

(iii) The identity of the candidate is apparent by unambiguous reference.

**HISTORY:**

Derived from 1972 Code § 23-3-41 [Codes, 1942, § 3179; Laws, 1935, ch. 19; Laws, 1971, ch. 510, § 1; Laws, 1978, ch. 479, § 1], § 23-3-43 [Codes, 1942, § 3181; Laws, 1935, ch. 19; Laws, 1971, ch. 510, § 2; Laws, 1978, ch. 479, § 1], and § 23-3-67 [Codes, 1942, 1942, § 3193; Laws, 1935, ch. 19; Laws, 1971, ch. 510, § 3; Laws, 1978, ch. 479, § 1], which were repealed by Laws, 1986, ch. 495, §§ 334, 335; en, Laws, 1986, ch. 495, § 247(1); Laws, 1999, ch. 301, § 7; Laws, 2017, ch. 417, § 2, eff from and after Jan. 1, 2018.

**Editor's Notes —**

Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 301, § 7.

**Amendment Notes —**

The 2017 amendment, effective January 1, 2018, substituted "means" for "shall mean" following the terms defined in (a) through (d); divided (b) into two sentences by substituting the period for "and"; divided (c) into two sentences by substituting "balloted measures. Political committee shall" for "balloted measures and shall"; and made minor stylistic changes throughout.

**Cross References —**

"Anything of value" as not meaning campaign contributions reported in accordance with § 23-15-801 et seq, for purposes of Lobbying Law Reform Act, see § 5-8-3.

**Comparable Laws from other States —**

Alabama Code, §§ 17-5-1 et seq. and 36-25-6.

Arkansas Code Annotated, §§ 7-6-201 through 7-6-227.

Georgia Code Annotated, §§ 21-5-30 et seq.

Louisiana Revised Statutes Annotated, §§ 18:1481 et seq.

Tennessee Code Annotated, §§ 2-10-101 et seq.

Texas Election Code, §§ 251.001 et seq., 258.001 et seq.

**Federal Aspects—**

Federal election campaigns – disclosure of federal campaign funds, see 52 USCS §§ 30101 et seq.

Federal election campaigns – general provisions, see 2 USCS §§ 30141 et seq.

## JUDICIAL DECISIONS

**1. Constitutionality.**

First Amendment protected advertisements profiling judicial candidates for state supreme court; communications created by producer independent of candidate, without explicit terms advocating specific electoral action, were not subject to mandatory disclosure requirements for campaign expenditures under state law. Chamber of Commerce of the United States v. Moore, 288 F.3d 187, 2002 U.S. App. LEXIS 6227 (5th Cir. Miss.), cert. denied, 537 U.S. 1018, 123 S. Ct. 536, 154 L. Ed. 2d 425, 2002 U.S. LEXIS 8339 (U.S. 2002).

## RESEARCH REFERENCES

**ALR.**

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 A.L.R.2d 1137.

Power of corporation to make political contribution or expenditure under state law. 79 A.L.R.3d 491.

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 A.L.R.3d 944.

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 A.L.R.4th 237.

Constitutional Validity of State or Local Regulation of Contributions by or to Political Action Committees. 24 A.L.R.6th 179.

Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (2 USCS §§ 431-454) pertaining to disclosure of campaign funds. 18 A.L.R. Fed. 949.

**Am. Jur.**

25 Am. Jur. 2d, Elections §§ 3-7.

26 Am. Jur. 2d, Elections §§ 446, 453, 459-473.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 61-64 (campaign spending).

**CJS.**

29 C.J.S., Elections §§ 17, 575, 578.

**Law Reviews.**

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

## § 23-15-803. Registration of political committees; administrative penalties for failure to comply.

(1) Each political committee shall file a statement of organization which must be received by the Secretary of State no later than forty-eight (48) hours after:

(a) Receipt of contributions aggregating in excess of Two Hundred Dollars ($200.00), or

(b) Having made expenditures aggregating in excess of Two Hundred Dollars ($200.00).

(2) The content of the statement of organization of a political committee shall include:

(a) The name, address, officers, and members of the committee;

(b) The designation of a chair of the organization and a custodian of the financial books, records and accounts of the organization, who shall be designated treasurer; and

(c) If the committee is authorized by a candidate, then the name, address, office sought and party affiliation of the candidate.

(3) Any change in information previously submitted in a statement of organization shall be reported and noted on the next regularly scheduled report.

(4) In addition to any other penalties provided by law, the Mississippi Ethics Commission may impose administrative penalties against any political committee that fails to comply with the requirements of this section in an amount not to exceed Five Thousand Dollars ($5,000.00) per violation. The notice, hearing and appeals provisions of Section 23-15-813 shall apply to any action taken pursuant to this subsection (4). The Mississippi Ethics Commission may pursue judicial enforcement of any penalties issued pursuant to this section.

**HISTORY:**

Derived from 1972 Code § 23-3-41 [Codes, 1942, § 3179; Laws, 1935, ch. 19; Laws, 1971, ch. 510, § 1; Laws, 1978, ch. 479, § 1], § 23-3-43 [Codes, 1942, § 3181; Laws, 1935, ch. 19; Laws, 1971, ch. 510, § 2; Laws, 1978, ch. 479, § 1], and § 23-3-67 [Codes, 1942, § 3193; Laws, 1935, ch. 19; Laws, 1971, ch. 510, § 3; Laws, 1978, ch. 479, § 1] which were repealed by Laws, 1986, ch. 495, §§ 334, 335; en, Laws, 1986, ch. 495, § 247(2); Laws, 2017, ch. 417, § 3, eff from and after Jan. 1, 2018.

**Amendment Notes —**

The 2017 amendment, effective January 1, 2018, rewrote former (a), which read: "Statements of organization. Each political committee shall file a statement of organization no later than ten (10) days after receipt of contributions aggregating in excess of Two Hundred Dollars ($200.00), or no later than ten (10) days after having made expenditures aggregating in excess of Two Hundred Dollars ($200.00)" and divided it into present (1), (1)(a) and (1)(b); redesignated former (b) as (2), and therein substituted "The content of the statement" for "Contents of statements. The statement"; redesignated former (b)(i) through (iii) as "(2)(a) through (c); rewrote (2)(a), which read: "The name and address of the committee and all officers"; rewrote (2)(b), which read: "Designation of a director of the committee and a custodian of books and accounts of the committee, who shall be designated treasurer; and"; in (2)(c), inserted "then" and made a minor stylistic change; deleted the former subsection heading for (3), which read: "Change of information in statements"; and added (4).

## RESEARCH REFERENCES

**ALR.**

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 A.L.R.2d 1137.

Power of corporation to make political contribution or expenditure under state law. 79 A.L.R.3d 491.

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 A.L.R.3d 944.

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 A.L.R.4th 237.

Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (2 USCS §§ 431-454) pertaining to disclosure of campaign funds. 18 A.L.R. Fed. 949.

**Am. Jur.**

25 Am. Jur. 2d, Elections §§ 3-7.

26 Am. Jur. 2d, Elections §§ 446, 453, 459-473.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 61-64 (campaign spending).

**CJS.**

29 C.J.S., Elections §§ 17, 575, 578.

**Law Reviews.**

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

### § 23-15-805. Filing of reports; public inspection and preservation of reports.

(a) Candidates for state, state district, and legislative district offices, and every political committee, which makes reportable contributions to or expenditures in support of or in opposition to a candidate for any such office or makes reportable contributions to or expenditures in support of or in opposition to a statewide ballot measure, shall file all reports required under this article with the Office of the Secretary of State.

(b) Candidates for county or county district office, and every political committee which makes reportable contributions to or expenditures in support of or in opposition to a candidate for such office or makes reportable contributions to or expenditures in support of or in opposition to a countywide ballot measure or a ballot measure affecting part of a county, excepting a municipal ballot measure, shall file all reports required by this section in the office of the circuit clerk of the county in which the election occurs, or directly to the Office of the Secretary of State via facsimile, electronic mail, postal mail or hand delivery. The circuit clerk shall forward copies of all reports to the Office of the Secretary of State.

(c) Candidates for municipal office, and every political committee which makes reportable contributions to or expenditures in support of or in opposition to a candidate for such office, or makes reportable contributions to or expenditures in support of or in opposition to a municipal ballot measure shall file all reports required by this article in the office of the municipal clerk of the municipality in which the election occurs, or directly to the Office of the Secretary of State via facsimile, electronic mail, postal mail or hand delivery. The municipal clerk shall forward copies of all reports to the Office of the Secretary of State.

(d) The Secretary of State, the circuit clerks and the municipal clerks shall make all reports received under this subsection available for public inspection and copying and shall preserve the reports for a period of five (5) years.

**HISTORY:**

Derived from 1972 Code § 23-3-41 [Codes, 1942, § 3179; Laws, 1935, ch. 19; Laws, 1971, ch. 510, § 1; Laws, 1978, ch. 479, § 1], § 23-3-43 [Codes, 1942, § 3181; Laws, 1935, ch. 19; Laws, 1971, ch. 510, § 2; Laws, 1978, ch. 479, § 1], and § 23-3-67 [Codes, 1942, 1942, § 3193; Laws, 1935, ch. 19; Laws, 1971, ch. 510, § 3; Laws, 1978, ch. 479, § 1], which were repealed by Laws, 1986, ch. 495, §§ 334, 335; en, Laws, 1986, ch. 495, § 247(3); Laws, 1999, ch. 301, § 8; Laws, 2001, ch. 301, § 5; Laws, 2017, ch. 417, § 4, eff from and after Jan. 1, 2018.

**Editor's Notes —**

Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 301, § 8.

The United States Attorney General, by letter dated February 7, 2001, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2001, ch. 301, § 5.

**Amendment Notes —**

The 2017 amendment, effective January 1, 2018, added "or directly to the Office of the Secretary of State…hand delivery" at the end of the next-to-last sentences of (b) and (c); deleted former (e), which read: "The provisions of this section applicable to the reporting by a political committee of contributions and expenditures regarding statewide ballot measures shall apply to the statewide special election for the purpose of selecting the official state flag provided for in Section 1 of Laws, 2001, ch. 301"; and made a minor stylistic change.

**Cross References —**

Requirement that persons who make independent expenditures in excess of a specified amount shall file a statement in the appropriate offices as provided in this section, see § 23-15-809.

## RESEARCH REFERENCES

**ALR.**

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 A.L.R.2d 1137.

Power of corporation to make political contribution or expenditure under state law. 79 A.L.R.3d 491.

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 A.L.R.3d 944.

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 A.L.R.4th 237.

Validity, construction, and application of provisions of Federal Election Campaign Act of

1971 (2 USCS §§ 431-454) pertaining to disclosure of campaign funds. 18 A.L.R. Fed. 949.

**Am. Jur.**

25 Am. Jur. 2d, Elections §§ 3-7.

26 Am. Jur. 2d, Elections §§ 446, 453, 459-473.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 61-64 (campaign spending).

**CJS.**

29 C.J.S., Elections §§ 17, 575, 578.

## § 23-15-807. Reporting requirements; contributions and disbursements of candidates and political committees.

(a) Each candidate or political committee shall file reports of contributions and disbursements in accordance with the provisions of this section. All candidates or political committees required to report such contributions and disbursements may terminate the obligation to report only upon submitting a final report that contributions will no longer be received or disbursements made and that the candidate or committee has no outstanding debts or obligations. The candidate, treasurer or chief executive officer shall sign the report.

(b) Candidates seeking election, or nomination for election, and political committees making expenditures to influence or attempt to influence voters for or against the nomination for election of one or more candidates or balloted measures at such election, shall file the following reports:

(i) In any calendar year during which there is a regularly scheduled election, a pre-election report shall be filed no later than the seventh day before any election in which the candidate or political committee has accepted contributions or made expenditures and shall be completed as of the tenth day before the election;

(ii) In 1987 and every fourth year thereafter, periodic reports shall be filed no later than the tenth day after April 30, May 31, June 30, September 30 and December 31, and shall be completed as of the last day of each period;

(iii) In any calendar years except 1987 and except every fourth year thereafter, a report covering the calendar year shall be filed no later than January 31 of the following calendar year; and

(iv) Except as otherwise provided in the requirements of paragraph (i) of this subsection (b), unopposed candidates are not required to file pre-election reports but must file all other reports required by paragraphs (ii) and (iii) of this subsection (b).

(c) All candidates for judicial office as defined in Section 23-15-975, or their political committees, shall file periodic reports in the year in which they are to be elected no later than the tenth day after April 30, May 31, June 30, September 30 and December 31.

(d) Each report under this article shall disclose:

(i) For the reporting period and the calendar year, the total amount of all contributions and the total amount of all expenditures of the candidate or reporting committee, including those required to be identified pursuant to paragraph (ii) of this subsection (d) as well as the total of all other contributions and expenditures during the calendar year. The reports shall be cumulative during the calendar year to which they relate;

(ii) The identification of:

1. Each person or political committee who makes a contribution to the reporting candidate or political committee during the reporting period, whose contribution or contributions within the calendar year have an aggregate amount or value in excess of Two Hundred Dollars ($200.00) together with the date and amount of any such contribution;

2. Each person or organization, candidate or political committee who receives an expenditure, payment or other transfer from the reporting candidate, political committee or its agent, employee, designee, contractor, consultant or other person or persons acting in its behalf during the reporting period when the expenditure, payment or other transfer to the person, organization, candidate or political committee within the calendar year have an aggregate value or amount in excess of Two Hundred Dollars ($200.00) together with the date and amount of the expenditure;

(iii) The total amount of cash on hand of each reporting candidate and reporting political committee;

(iv) In addition to the contents of reports specified in paragraphs (i), (ii) and (iii) of this subsection (d), each political party shall disclose:

1. Each person or political committee who makes a contribution to a political party during the reporting period and whose contribution or contributions to a political party within the calendar year have an aggregate amount or value in excess of Two Hundred Dollars ($200.00), together with the date and amount of the contribution;

2. Each person or organization who receives an expenditure or expenditures by a political party during the reporting period when the expenditure or expenditures to the person or organization within the calendar year have an aggregate value or amount in excess of Two Hundred Dollars ($200.00), together with the date and amount of the expenditure;

(v) Disclosure required under this section of an expenditure to a credit card issuer, financial institution or business allowing payments and money transfers to be made over the Internet must include, by way of detail or separate entry, the amount of funds passing to each person, business entity or organization receiving funds from the expenditure.

(e) The appropriate office specified in Section 23-15-805 must be in actual receipt of the reports specified in this article by 5:00 p.m. on the dates specified in subsection (b) of this section. If the date specified in subsection (b) of this section shall fall on a weekend or legal holiday then the report shall be due in the appropriate office at 5:00 p.m. on the first working day before the date specified in subsection (b) of this section. The reporting candidate or reporting political committee shall ensure that the reports are delivered to the appropriate office by the filing deadline. The Secretary of State may approve specific means of electronic transmission of completed campaign finance disclosure reports, which may include, but not be limited to, transmission by electronic facsimile (FAX) devices.

(f)(i) If any contribution of more than Two Hundred Dollars ($200.00) is received by a candidate or candidate's political committee after the tenth day, but more than forty-eight (48) hours before 12:01 a.m. of the day of the election, the candidate or political committee shall notify the appropriate office designated in Section 23-15-805, within forty-eight (48) hours of receipt of the contribution. The notification shall include:

1. The name of the receiving candidate;
2. The name of the receiving candidate's political committee, if any;
3. The office sought by the candidate;
4. The identification of the contributor;
5. The date of receipt;
6. The amount of the contribution;
7. If the contribution is in-kind, a description of the in-kind contribution; and
8. The signature of the candidate or the treasurer or chair of the candidate's political organization.

(ii) The notification shall be in writing, and may be transmitted by overnight mail, courier service, or other reliable means, including electronic facsimile (FAX), but the candidate or candidate's committee shall ensure that the notification shall in fact be received in the appropriate office designated in Section 23-15-805 within forty-eight (48) hours of the contribution.

**HISTORY:**

Derived from 1972 Code § 23-3-41 [Codes, 1942, § 3179; Laws, 1935, ch. 19; Laws, 1971, ch. 510, § 1; Laws, 1978, ch. 479, § 1], § 23-3-43 [Codes, 1942, § 3181; Laws, 1935, ch. 19; Laws, 1971, ch. 510, § 2; Laws, 1978, ch. 479, § 1], and § 23-3-67 [Codes, 1942, § 3193; Laws, 1935, ch. 19; Laws, 1971, ch. 510, § 3; Laws, 1978, ch. 479, § 1], which were repealed by Laws, 1986, ch. 495, §§ 334, 335; en, Laws, 1986, ch. 495, § 247(u); Laws, 1999, ch. 301, § 9; Laws, 2017, ch. 417, § 5, eff from and after Jan. 1, 2018.

**Editor's Notes —**

Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 301, § 9.

**Amendment Notes —**

The 2017 amendment, effective January 1, 2018, rewrote the next-to-last sentence of (a), which read: "All candidates or political committees required to report may terminate its obligation to report only upon submitting a final report that it will no longer receive any contributions or make any disbursement and that such candidate or committee has no outstanding debts or obligations"; in (b), substituted "making expenditures to influence or attempt to influence voters for or against the nomination for election of" for "that make expenditures for the purpose of influencing or attempting to influence the action of voters for or against the nomination for election, or election, of" in the introductory paragraph, and added (iv); in (c), inserted "periodic reports" and deleted "periodic reports which shall be filed" following "they are to be elected"; in (d), deleted the subsection heading, which read: "Contents of reports," substituted "committee, including those required to be identified pursuant to paragraph (ii) of this subsection (d)" for "committee, which shall include those required to be identified pursuant to item (ii) of this paragraph" in (i), substituted "paragraphs (i), (ii) and (iii) of this subsection (d)" for "items (i), (ii) and (iii) of this paragraph" in (iv), substituted "an expenditure or expenditures by a political party during" for "an expenditure by a political party or expenditures by a political party during" in (iv)2, and added (v); in (e), substituted "subsection (b)" for "paragraph (b)" everywhere it appears; rewrote (f)(i)8, which read: "The signature of the candidate or the treasurer or director of the candidate's political committee"; and made minor stylistic changes.

**Cross References —**

Requirement that persons who make independent expenditures in excess of a specified amount shall file a statement which comports with this section, see § 23-15-809.

## JUDICIAL DECISIONS

**1. In general.**

State statute requiring every candidate for political office to disclose each contributor and recipient of campaign funds is invalid under First Amendment as applied to minor political party that historically has been object of harassment. Brown v. Socialist Workers '74 Campaign Comm., 459 U.S. 87, 103 S. Ct. 416, 74 L. Ed. 2d 250, 1982 U.S. LEXIS 169 (U.S. 1982).

## RESEARCH REFERENCES

**ALR.**

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 A.L.R.2d 1137.

Power of corporation to make political contribution or expenditure under state law. 79 A.L.R.3d 491.

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 A.L.R.3d 944.

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 A.L.R.4th 237.

Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (2 USCS §§ 431-454) pertaining to disclosure of campaign funds. 18 A.L.R. Fed. 949.

**Am. Jur.**

25 Am. Jur. 2d, Elections §§ 3-7.

26 Am. Jur. 2d, Elections §§ 446, 453, 459-473.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 61-64 (campaign spending).

**CJS.**

29 C.J.S., Elections §§ 17, 575, 578.

**Law Reviews.**

Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

## § 23-15-809. Statements by persons other than political committees; filing; indices of expenditures.

(a) Every person who makes independent expenditures in an aggregate amount or value in excess of Two Hundred Dollars ($200.00) during a calendar year shall file a statement containing the information required under Section 23-15-807. Such statement shall be filed with the appropriate offices as provided for in Section 23-15-805, and such person shall be considered a political committee for the purpose of determining place of filing.

(b) Statements required to be filed by this section shall include:

(i) Information indicating whether the independent expenditure is in support of, or in opposition to, the candidate involved;

(ii) Under penalty of perjury, a certification of whether or not such independent expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate; and

(iii) The identification of each person who made a contribution in excess of Two Hundred Dollars ($200.00) to the person filing such statement which was made for the purpose of furthering an independent expenditure.

**HISTORY:**

Derived from 1972 Code § 23-3-41 [Codes, 1942, § 3179; Laws, 1935, ch. 19; Laws, 1971, ch. 510, § 1; Laws, 1978, ch. 479, § 1], § 23-

3-43 [Codes, 1942, § 3181; Laws, 1935, ch. 19; Laws, 1971, ch. 510, § 2; Laws, 1978, ch. 479, § 1], and § 23-3-67 [Codes, 1942, § 3193; Laws, 1935, ch. 19; Laws, 1971, ch. 510, § 3; Laws, 1978, ch. 479, § 1], which were repealed by Laws, 1986, ch. 495, §§ 334, 335; en, Laws, 1986, ch. 495, § 247(5), eff from and after January 1, 1987.

### JUDICIAL DECISIONS

**1. Constitutionality.**

First Amendment protected advertisements profiling judges; ads created by producer independent of candidate, without explicit terms advocating specific electoral action, were not subject to mandatory disclosure requirements for campaign expenditures under state law. Chamber of Commerce of the United States v. Moore, 288 F.3d 187, 2002 U.S. App. LEXIS 6227 (5th Cir. Miss.), cert. denied, 537 U.S. 1018, 123 S. Ct. 536, 154 L. Ed. 2d 425, 2002 U.S. LEXIS 8339 (U.S. 2002).

### RESEARCH REFERENCES

**ALR.**

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 A.L.R.2d 1137.

Power of corporation to make political contribution or expenditure under state law. 79 A.L.R.3d 491.

State regulation of the giving or making of political contribution or expenditures by private individuals. 94 A.L.R.3d 944.

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 A.L.R.4th 237.

Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (2 USCS §§ 431-454) pertaining to disclosure of campaign funds. 18 A.L.R. Fed. 949.

**Am. Jur.**

25 Am. Jur. 2d, Elections §§ 3-5.

26 Am. Jur. 2d, Elections §§ 446, 453, 459-473.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 61-64 (campaign spending).

**CJS.**

29 C.J.S., Elections §§ 17, 575, 578.

**Law Reviews.**

Mississippi Election Code of 1986, 56 Miss L. J. 535, December 1986.

## § 23-15-811. Penalties.

(a) Any candidate or any other person who willfully violates the provisions and prohibitions of this article shall be guilty of a misdemeanor and upon conviction shall be punished by a fine in a sum not to exceed Three Thousand Dollars ($3,000.00) or imprisoned for not longer than six (6) months or by both fine and imprisonment.

(b) In addition to the penalties provided in subsection (a) of this section and Chapter 13, Title 97, Mississippi Code of 1972, any candidate or political committee which is required to file a statement or report and fails to file the statement or report on the date it is due may be compelled to file the statement or report by an action in the nature of a mandamus brought by the Mississippi Ethics Commission.

(c) No candidate shall be certified as nominated for election or as elected to office until he or she files all reports required by this article that are due as of the date of certification.

(d) No candidate who is elected to office shall receive any salary or other remuneration for the office until he or she files all reports required by this article that are due as of the date the salary or remuneration is payable.

(e) In the event that a candidate fails to timely file any report required pursuant to this article but subsequently files a report or reports containing all of the information required to be reported, the candidate shall not be subject to the sanctions of subsections (c) and (d) of this section.

**HISTORY:**

Derived from 1972 Code § 23-3-41 [Codes, 1942, § 3179; Laws, 1935, ch. 19; Laws, 1971, ch. 510, § 1; Laws, 1978, ch. 479, § 1], § 23-3-43 [Codes, 1942, § 3181; Laws, 1935, ch. 19; Laws, 1971, ch. 510, § 2; Laws, 1978, ch. 479, § 1], and § 23-3-67 [Codes, 1942, § 3193; Laws, 1935, ch. 19; Laws, 1971, ch. 510, § 3; Laws, 1978, ch. 479, § 1], which were repealed by Laws, 1986, ch. 495, §§ 334, 335; en, Laws, 1986, ch. 495, § 247(6); Laws, 1999, ch. 301, § 10; Laws, 2017, ch. 417, § 6, eff from and after Jan. 1, 2018.

**Editor's Notes —**

Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 301, § 10.

**Amendment Notes —**

The 2017 amendment, effective January 1, 2018, substituted "who willfully violates" for "who shall willfully and deliberately and substantially violate" in (a); in (b), substituted "subsection (a)" for "paragraph (a)," inserted "and Chapter 13, Title 97, Mississippi Code of 1972," substituted "report and fails to file" for "report which fails to file," and added "brought by the Mississippi Ethics Commission" at the end; in (c) and (d), deleted "unless and" preceding "until," made gender neutral changes and inserted "that are"; deleted "by him as of the date on which the sanctions of paragraphs (c) and (d) of this section would be applied to him" following "required to be reported" and substituted "subsections (c) and (d) of this section" for "said paragraphs (c) and (d) at the end; and made minor stylistic changes.

**Cross References —**

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

## JUDICIAL DECISIONS

### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-6-67.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-6-67.**

Chapter 510, Laws of 1971, became effective on the date of its approval, April 9, 1971 and not on September 14, 1971, on which date the attorney general of the State of Mississippi was advised by the Attorney General of the United States that the latter would not at that time interpose an objection to the implementation of this statute under the provisions of the Voting Rights Act of 1965 (42 USCS § 1973c). Ladner v. Fisher, 269 So. 2d 633, 1972 Miss. LEXIS 1227 (Miss. 1972).

In a proceeding for judicial review for executive committee's order rescinding its order declaring the petitioner a nominee, the special tribunal did not have authority to determine that respondent, because of alleged violations of Corrupt Practices Act, was disqualified from holding an office of supervisor and for that reason could not run for the Democratic Primary and perhaps become a nominee for that office. Blakeney v. Mayfield, 226 Miss. 53, 83 So. 2d 748, 1955 Miss. LEXIS 606 (Miss. 1955).

## OPINIONS OF THE ATTORNEY GENERAL

The prescribed sanctions of subsections (c) & (d) are applicable once the deadline passes and the candidate has not filed the required report. Artigues, Jr., 2000 Miss. Op. Att'y Gen. 60.

A city by and through the board of aldermen has an affirmative duty to comply with subsection (d) by withholding the payment of any salary or other remuneration until the offending official files all delinquent reports. Artigues, Jr., 2000 Miss. Op. Att'y Gen. 60.

A candidate who ultimately files all required reports is entitled to retain any compensation paid while the candidate was delinquent in filing reports; likewise, a candidate who ultimately files all delinquent reports would be entitled to any compensation withheld pursuant to subsection (d). Artigues, Jr., 2000 Miss. Op. Att'y Gen. 60.

## RESEARCH REFERENCES

**ALR.**

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 A.L.R.2d 1137.

Power of corporation to make political contribution or expenditure under state law. 79 A.L.R.3d 491.

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Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 A.L.R.4th 237.

Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (2 USCS §§ 431-454) pertaining to disclosure of campaign funds. 18 A.L.R. Fed. 949.

**Am. Jur.**

25 Am. Jur. 2d, Elections §§ 3-7.

26 Am. Jur. 2d, Elections §§ 446, 453, 459-473.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 61-64 (campaign spending).

**CJS.**

29 C.J.S., Elections §§ 17, 575, 578.

**Law Reviews.**

Mississippi Election Code of 1986, 56 Miss L. J. 535, December 1986.

## § 23-15-813. Civil penalty for failure to file campaign finance disclosure report; notice to candidate of failure to file; assessment of penalty by Mississippi Ethics Commission; hearing; appeal.

(a) In addition to any other penalty permitted by law, the Mississippi Ethics Commission shall require any candidate or political committee, as identified in Section 23-15-805(a), and any other political committee registered with the Secretary of State, who fails to file a campaign finance disclosure report as required under Sections 23-15-801 through 23-15-813, or Sections 23-17-47 through 23-17-53, or who shall file a report that fails to substantially comply with the requirements of Sections 23-15-801 through 23-15-813, or Sections 23-17-47 through 23-17-53, to be assessed a civil penalty as follows:

(i) Within five (5) calendar days after any deadline for filing a report pursuant to Sections 23-15-801 through 23-15-813, or Sections 23-17-47 through 23-17-53, the Secretary of State shall compile a list of those candidates and political committees who have failed to file a report. The list shall be provided to the Mississippi Ethics Commission. The Secretary of State shall provide each candidate or political committee, who has failed to file a report, notice of the failure by first-class mail.

(ii) Beginning with the tenth calendar day after which any report is due, the Mississippi Ethics Commission shall assess the delinquent candidate and political committee a civil penalty of Fifty Dollars ($50.00) for each day or part of any day until a valid report is delivered to the Secretary of State, up to a maximum of ten (10) days. In the discretion of the Mississippi Ethics Commission, the assessing of the fine may be waived, in whole or in part, if the Commission determines that unforeseeable mitigating circumstances, such as the health of the candidate, interfered with the timely filing of a report. Failure of a candidate or political committee to receive notice of failure to file a report from the Secretary of State is not an unforeseeable mitigating circumstance, and failure to receive the notice shall not result in removal or reduction of any assessed civil penalty.

(iii) Filing of the required report and payment of the fine within ten (10) calendar days of notice by the Secretary of State that a required statement has not been filed constitutes compliance with Sections 23-15-801 through 23-15-813, or Sections 23-17-47 through 23-17-53.

(iv) Payment of the fine without filing the required report does not excuse or exempt any person from the filing requirements of Sections 23-15-801 through 23-15-813, and Sections 23-17-47 through 23-17-53.

(v) If any candidate or political committee is assessed a civil penalty, and the penalty is not subsequently waived by the Mississippi Ethics Commission, the candidate or political committee shall pay the fine to the Commission within ninety (90) days of the date of the assessment of the fine. If, after one hundred twenty (120) days of the assessment of the fine the payment for the entire amount of the assessed fine has not been received by the Commission, the Commission shall notify the Attorney General of the delinquency, and the Attorney General shall file, where necessary, a suit to compel payment of the civil penalty.

(b)(i) Upon the sworn application, made within sixty (60) calendar days of the date upon which the required report is due, of a candidate or political committee against whom a civil penalty has been assessed pursuant to subsection (a) of this section, the Secretary of State shall forward the application to the State Board of Election Commissioners. The State Board of Election Commissioners shall appoint one or more hearing officers who shall be former chancellors, circuit court judges, judges of the Court of Appeals or justices of the Supreme Court, to conduct hearings held pursuant to this article. The hearing officer shall fix a time and place for a hearing and shall cause a written notice specifying the civil penalties that have been assessed against the candidate or political committee and notice of the time and place of the hearing to be served upon the candidate or political committee at least twenty (20) calendar days before the hearing date. The notice may be served by mailing a copy of the notice by certified mail, postage prepaid, to the last-known business address of the candidate or political committee.

(ii) The hearing officer may issue subpoenas for the attendance of witnesses and the production of documents at the hearing. Process issued by the hearing officer shall extend to all parts of the state and shall be served by any person designated by the hearing officer for the service.

(iii) The candidate or political committee has the right to appear either personally, by counsel or both, to produce witnesses or evidence in his or her behalf, to cross-examine witnesses and to have subpoenas issued by the hearing officer.

(iv) At the hearing, the hearing officer shall administer oaths as may be necessary for the proper conduct of the hearing. All hearings shall be conducted by the hearing officer, who shall not be bound by strict rules of procedure or by the laws of evidence, but the determination shall be based upon sufficient evidence to sustain it. The scope of review at the hearing shall be limited to making a determination of whether failure to file a required report was due to an unforeseeable mitigating circumstance.

(v) In any proceeding before the hearing officer, if any witness fails or refuses to attend upon a subpoena issued by the commission, refuses to testify, or refuses to produce any documents called for by a subpoena, the attendance of the witness, the giving of his or her testimony or the production of the documents shall be enforced by a court of competent jurisdiction of this state in the manner provided for the enforcement of attendance and testimony of witnesses in civil cases in the courts of this state.

(vi) Within fifteen (15) calendar days after conclusion of the hearing, the hearing officer shall reduce his or her decision to writing and forward an attested true copy of the decision to the last-known business address of the candidate or political committee by way of United States first-class, certified mail, postage prepaid.

(c)(i) The right to appeal from the decision of the hearing officer in an administrative hearing concerning the assessment of civil penalties authorized pursuant to this section is granted. The appeal shall be to the Circuit Court of Hinds County and shall include a verbatim transcript of the testimony at the hearing. The appeal shall be taken within thirty (30) calendar days after notice of the decision of the commission following an administrative hearing. The appeal shall be perfected upon filing notice of the appeal and the prepayment of all costs, including the cost of preparing the record of the proceedings by the hearing officer, and filing a bond in the sum of Two Hundred Dollars ($200.00), conditioned that if the decision of the hearing officer is affirmed by the court, the candidate or political committee will pay the costs of the appeal and the action in court. If the decision is reversed by the court, the Mississippi Ethics Commission will pay the costs of the appeal and the action in court.

(ii) If there is an appeal, the appeal shall act as a supersedeas. The court shall dispose of the appeal and enter its decision promptly. The hearing on the appeal may be tried in vacation, in the court's discretion. The scope of review of the court shall be limited to a review of the record made before the hearing officer to determine if the action of the hearing officer is unlawful for the reason that it was 1. not supported by substantial evidence, 2. arbitrary or capricious, 3. beyond the power of the hearing officer to make, or 4. in violation of some statutory or constitutional right of the appellant. The decision of the court may be appealed to the Supreme Court in the manner provided by law.

(d) If, after forty-five (45) calendar days of the date of the administrative hearing procedure set forth in subsection (b), the candidate or political committee identified in subsection (a) of this section fails to pay the monetary civil penalty imposed by the hearing officer, the Secretary of State shall notify the Attorney General of the delinquency. The Attorney General shall investigate the offense in accordance with the provisions of this chapter, and where necessary, file suit to compel payment of the unpaid civil penalty.

(e) If, after twenty (20) calendar days of the date upon which a campaign finance disclosure report is due, a candidate or political committee identified in subsection (a) of this section shall not have filed a valid report with the Secretary of State, the Secretary of State shall notify the Attorney General of those candidates and political committees who have not filed a valid report, and the Attorney General shall prosecute the delinquent candidates and political committees.

**HISTORY:**

Derived from 1972 Code § 23-3-41 [Codes, 1942, § 3179; Laws, 1935, ch. 19; Laws, 1971, ch. 510, § 1; Laws, 1978, ch. 479, § 1], § 23-3-43 [Codes, 1942, § 3181; Laws, 1935, ch. 19; Laws, 1971, ch. 510, § 2; Laws, 1978, ch. 479, § 1], and § 23-3-67 [Codes, 1942, § 3193; Laws, 1935, ch. 19; Laws, 1971, ch. 510, § 3; Laws, 1978, ch. 479, § 1], repealed by Laws, 1986, ch. 495, §§ 334, 335; en, Laws, 1986, ch. 495, § 247(7); Laws, 1993, ch. 518, § 26; Laws, 1999, ch. 301, § 11; Laws, 2017, ch. 417, § 7, eff from and after Jan. 1, 2018.

**Editor's Notes —**

Laws of 1993, ch. 518, § 45, provides as follows:

"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Laws of 1993, ch. 518.

Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 301, § 11.

**Amendment Notes —**

The 2017 amendment, effective January 1, 2018, substituted "Mississippi Ethics Commission" and "Commission" for "Secretary of State" in the introductory paragraph of (a), (a)(ii), (a)(v) and (c)(i); added the second sentence of (a)(i); substituted "does not excuse or exempt any person from" for "does not in any way excuse or exempt any person required to file from" in (a)(iv); in (b)(i), substituted "subsection (a) of this section" for "paragraph (a)," substituted "Supreme Court, to conduct" for "Supreme Court, and who shall conduct" and substituted "a copy of the notice" for "a copy thereof"; substituted "documents" for "books and papers" in (b)(ii); deleted "in the conduct of the proceedings" following "laws of evidence" in the second sentence of (b)(iv); in (b)(v), substituted "documents" for references to "books and papers"; in (d), substituted "subsection (b)" for "paragraph (b)" and "subsection (a)" for "paragraph (a)"; substituted "subsection (a)" for "paragraph (a)" in (e); and made minor stylistic changes throughout.

**Cross References —**

Mississippi Ethics Commission, see § 25-4-1 et seq.

## RESEARCH REFERENCES

**ALR.**

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 A.L.R.2d 1137.

Power of corporation to make political contribution or expenditure under state law. 79 A.L.R.3d 491.

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 A.L.R.3d 944.

Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 A.L.R.4th 237.

Validity, construction, and application of provisions of Federal Election Campaign Act of

1971 (2 USCS §§ 431-454) pertaining to disclosure of campaign funds. 18 A.L.R. Fed. 949.

**Am. Jur.**
25 Am. Jur. 2d, Elections §§ 3-7.
26 Am. Jur. 2d, Elections §§ 446, 453, 459-473.
9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 61-64 (campaign spending).

**CJS.**
29 C.J.S., Elections §§ 17, 575, 578.

**Law Reviews.**
Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

## § 23-15-815. Administrative provisions; duties of Secretary of State.

(a) The Secretary of State shall prescribe and make available forms and promulgate rules and regulations necessary to implement this article.

(b) The Secretary of State, circuit clerks and municipal clerks shall, within forty-eight (48) hours after the time of the receipt by the appropriate office of reports and statements filed with it, make them available for public inspection, and copying at the expense of the person requesting such copying, and keep such designations, reports and statements for a period of three (3) years from the date of receipt.

**HISTORY:**
Derived from 1972 Code § 23-3-41 [Codes, 1942, § 3179; Laws, 1935, ch. 19; Laws, 1971, ch. 510, § 1; Laws, 1978, ch. 479, § 1], § 23-3-43 [Codes, 1942, § 3181; Laws, 1935, ch. 19; Laws, 1971, ch. 510, § 2; Laws, 1978, ch. 479, § 1], and § 23-3-67 [Codes, 1942, § 3193; Laws, 1935, ch. 19; Laws, 1971, ch. 510, § 3; Laws, 1978, ch. 479, § 1], which were repealed by Laws, 1986, ch. 495, §§ 334, 335; en, Laws, 1986, ch. 495, § 247(8), eff from and after January 1, 1987.

### RESEARCH REFERENCES

**ALR.**
Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 A.L.R.2d 1137.
Power of corporation to make political contribution or expenditure under state law. 79 A.L.R.3d 491.
State regulation of the giving or making of political contributions or expenditures by private individuals. 94 A.L.R.3d 944.
Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships. 22 A.L.R.4th 237.
Validity, construction, and application of provisions of Federal Election Campaign Act of 1971 (2 USCS §§ 431-454) pertaining to disclosure of campaign funds. 18 A.L.R. Fed. 949.

**Am. Jur.**
25 Am. Jur. 2d, Elections §§ 3-7.
26 Am. Jur. 2d, Elections §§ 446, 453, 459-473.
9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 61-64 (campaign spending).

**CJS.**
29 C.J.S., Elections §§ 17, 575, 578.

## § 23-15-817. Compilation and dissemination of list of candidates failing to meet filing requirements.

The Secretary of State shall compile a list of all candidates for the Legislature or any statewide office who fail to file a campaign disclosure report by the dates specified in Section 23-15-807(b). The list shall be provided to the Mississippi Ethics Commission so that the commission may bring a mandamus as provided in Section 23-15-811 or take any other disciplinary action as provided in this chapter. The list shall also be disseminated to the members of the Mississippi Press Association within two (2) working days after such reports are due and made available to the public.

**HISTORY:**

Laws, 1999, ch. 301, § 12; Laws, 2017, ch. 417, § 8, eff from and after Jan. 1, 2018.

**Editor's Notes —**

Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 301, § 12.

**Amendment Notes —**

The 2017 amendment, effective January 1, 2018, divided the former section into the first and third sentences and added the second sentence; and inserted "also" in the last sentence.

### § 23-15-819. Campaign contributions or expenditures of money or other things of value by foreign nationals prohibited.

(1) It shall be unlawful for a foreign national, directly or through any other person, to make any contribution or any expenditure of money or other thing of value, or to promise expressly or impliedly to make any such contribution or expenditure, in connection with an election to any political office or in connection with any primary election, convention or caucus held to select candidates for any political office.

(2) No person shall solicit, accept or receive any such contribution from a foreign national.

(3) The term "foreign national" means:

(a) A foreign national as defined in 22 USCS 611(b), except that the terms "foreign national" does not include any individual who is a citizen of the United States; or

(b) An individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence.

**HISTORY:**

Laws, 2017, ch. 441, § 131, eff from and after July 1, 2017.

### § 23-15-821. Personal use of campaign contributions by elected public officeholders or candidates for public office prohibited; definitions; disposition of unused funds; penalties.

(1) The personal use of campaign contributions by any elected public officeholder or by any candidate for public office is prohibited.

(a) For the purposes of this section, "personal use" is defined as any use, other than expenditures related to gaining or holding public office, or performing the functions and duties of public office, for which the candidate for public office or elected public official would be required to treat the amount of the expenditure as gross income under Section 61 of the Internal Revenue Code of 1986, 26 USC Section 61, or any subsequent corresponding Internal Revenue Code of the United States, as from time to time amended.

"Personal use" shall not include donations to a political organization, or to a political action committee, or to another candidate.

(b) "Candidate" shall mean any individual described in Section 23-15-801(b), and shall include any person having been a candidate until such time that the person takes office or files a termination report as provided in this section.

(c) "Officeholder" shall mean any elected or appointed official from the beginning of his or her term of office until that person no longer holds office.

(2) The following personal use expenditures are specifically prohibited under this section:

(a) Any residential or household items, supplies or expenditures, including mortgage, rent or utility payments for any part of any personal residence where a homestead exemption is claimed of a candidate or officeholder or a member of the candidate's or officeholder's family;

(b) Mortgage, rent or utility payments for any part of any nonresidential property that is owned by a candidate or officeholder or a member of a candidate's or officeholder's family and used for campaign purposes, to the extent the payments exceed the fair market value of the property usage;

(c) Funeral, cremation or burial expenses within a candidate's or officeholder's family;

(d) Clothing, other than items of de minimis value that are used for gaining or holding public office or performing the functions and duties of public office;

(e) Automobiles, except for automobile rental expenses and other automobile expenses related to gaining or holding public office or performing the functions and duties of public office;

(f) Tuition payments within a candidate's or officeholder's family other than those associated with training campaign staff or associated with an officeholder's duties;

(g) Salary payments to a member of a candidate's family, unless the family member is providing bona fide services to the campaign. If a family member provides bona fide services to a campaign, any salary payments in excess of the fair market value of the services provided is personal use;

(h) Nondocumented loans of any type, including loans to candidates;

(i) Travel expenses except for travel expenses of a candidate, officeholder or staff member of the officeholder for travel undertaken as an ordinary and necessary expense of gaining or holding public office, or performing the functions and duties of public office or for attending meetings or conferences of officials similar to the office held or sought, or for an issue the legislative body is or will consider, or attending a state or national convention of any party. If a candidate or officeholder uses campaign contributions to pay expenses associated with travel that involves both personal activities and activities related to gaining or holding public office or performing the functions and duties of public office, the incremental expenses that result from the personal activities are personal use, unless the person(s) benefiting from this use reimburse(s) the campaign account within thirty (30) days for the amount of the incremental expenses; and

(j) Payment of any fines, fees or penalties assessed pursuant to Mississippi law.

(3) Any expense that reasonably relates to gaining or holding public office, or performing the functions and duties of public office is a specifically permitted use of campaign contributions. Such expenditures are not considered personal use expenditures and may include, but are not limited to, the following expenditures:

(a) The defrayal of ordinary and necessary expenses of a candidate or officeholder, including expenses reasonably related to performing the duties of the office held or sought to be held;

(b) Campaign office or officeholder office expenses and equipment, provided the expenditures and the use of the equipment can be directly attributable to the campaign or office held;

(c) Donations to charitable organizations, not-for-profit organizations or for sponsorships, provided the candidate or officeholder does not receive monetary compensation, other than reimbursements of expenses, from the recipient organization;

(d) Gifts of nominal value and donations of a nominal amount made on a special occasion such as a holiday, graduation, marriage, retirement or death, unless made to a member of the candidate's or officeholder's family;

(e) Meal and beverage expenses which are incurred as part of a campaign activity or as a part of a function that is related to the candidate's or officeholder's responsibilities, including meals between and among candidates and/or officeholders that are incurred as an ordinary and necessary expense of seeking, holding or maintaining public office, or seeking, holding or maintaining a position within the Legislature or other publicly elected body;

(f) Reasonable rental or accommodation expenses incurred by an officeholder during a legislative session or a day or days in which the officeholder is required by his or her duties to be at the Capitol or another location outside the officeholder's county of residence. Such rental or accommodation expenses shall not exceed Fifty Dollars ($50.00) per day, if the officeholder receives per diem, or One Hundred Ninety Dollars ($190.00) per day, if the officeholder receives no per diem. Any expenses incurred under this paragraph (f) must be reported as an expenditure pursuant to this section;

(g) Communication access expenses, including mobile devices and Internet access costs. Examples of communication access expenses include, but are not limited to, the following: captioning on television advertisements; video clips; sign language interpreters; computer-aided real-time (CART) services; and assistive listening devices;

(h) Costs associated with memberships to chambers of commerce and civic organizations;

(i) Legal fees and costs associated with any civil action, criminal prosecution or investigation related to conduct reasonably related to the candidacy or performing the duties of the office held.

(4) Upon filing the termination report required under Section 23-15-807, any campaign contributions not used to pay for the expenses of gaining or

holding public office or performing the functions and duties of public office shall:

(a) Be maintained in a campaign account(s);

(b) Be donated to a political organization, or to a political action committee, or to another candidate;

(c) Be transferred, in whole or in part, into a newly established political action committee or ballot question advocate;

(d) Be donated to a tax-exempt charitable organization as that term is used in Section 501(c) (3) of the Internal Revenue Code of 1986, 26 USC Section 501, or any subsequent corresponding Internal Revenue Code of the United States, as from time to time amended;

(e) Be donated to the State of Mississippi; or

(f) Be returned to a donor or donors.

(5) Any candidate for public office or any elected official who willfully violates this section shall be guilty of a misdemeanor and punished by a fine of One Thousand Dollars ($1,000.00) and by a state assessment equal to the amount of misappropriated campaign contributions. The state assessment shall be deposited into the Public Employees' Retirement System. No fine or assessment imposed under this section shall be paid by a third party.

(6) Any contributions accruing to a candidate's or officeholder's campaign account before January 1, 2018, shall be exempt and not subject to the provisions of this section. All exempt contributions must be designated as exempt on all reports filed with the Secretary of State pursuant to the provisions of this chapter.

(7) The Mississippi Ethics Commission shall issue advisory opinions regarding any of the requirements set forth in this section. When any officeholder or candidate requests an advisory opinion, in writing, and has stated all of the facts to govern the opinion, and the Ethics Commission has prepared and delivered the opinion with references to the request, there shall be no civil or criminal liability accruing to or against any officeholder or candidate who, in good faith, follows the direction of the opinion and acts in accordance with the opinion, unless a court of competent jurisdiction, after a full hearing, judicially declares that the opinion is manifestly wrong and without any substantial support. No opinion shall be given or considered if the opinion would be given after judicial proceedings have commenced.

All advisory opinions issued pursuant to the provisions of this subsection (7) shall be made public and shall be issued within ninety (90) days of written request. The request for an advisory opinion shall be confidential as to the identity of the individual making the request. The Ethics Commission shall, so far as practicable and before making public, an advisory opinion issued under the provisions of on this subsection (7), make such deletions and changes thereto as may be necessary to ensure the anonymity of the public official and any other person named in the opinion.

**HISTORY:**

Laws, 2017, ch. 417, § 1, eff from and after Jan. 1, 2018.

**Cross References —**

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

## ARTICLE 25.

## VACANCIES IN OFFICE.

Sec.

| | |
|---|---|
| 23-15-831. | Appointments by Governor to fill vacancies in state or state district elected offices other than in Legislature. |
| 23-15-832. | Notice to Secretary of State of vacancy in office for which special election is required to be called to fill. |
| 23-15-833. | Special elections to fill vacancies in county, county district, and district attorney offices, and office of circuit judge or chancellor. |
| 23-15-835. | Notice of special election for county or county district office; election procedures. |
| 23-15-837. | Procedure where only one person has qualified for candidacy in special election for state district office or legislative office. |
| 23-15-839. | Appointments to fill vacancies in county or county district offices; special election procedures; procedure where only one person has qualified for candidacy in special election. |
| 23-15-841. | Repealed. |
| 23-15-843. | Special elections to fill vacancies in office of district attorney; emergency appointments. |
| 23-15-845 and 23-15-847. | Repealed. |
| 23-15-849. | Special elections to fill vacancies in office of justice of Supreme Court, judge of Court of Appeals, circuit judge, or chancellor; interim appointments. |
| 23-15-851. | Elections to fill vacancies in offices in Legislature; notice. |
| 23-15-853. | Special elections to fill vacancies in representation in Congress; notice; qualification by candidates. |
| 23-15-855. | Elections to fill vacancies in office of U.S. Senator; interim appointments by Governor. |
| 23-15-857. | Appointments to fill vacancies in elective offices in cities, towns, or villages; elections to fill such offices; procedure where no person or only one person has qualified as candidate. |
| 23-15-859. | Date of special municipal election; notice. |

### § 23-15-831. Appointments by Governor to fill vacancies in state or state district elected offices other than in Legislature.

When a vacancy other than in the Legislature occurs by death, resignation or otherwise, in any state or state district elected office, and there is no special provision of law for filling the vacancy, the same shall be filled for the unexpired term by appointment by the Governor.

**HISTORY:**

Derived from 1972 Code § 23-5-195 [Codes, Hutchinson's 1848, ch. 7, art 6 (2); 1857, ch. 4, art 26; 1871, § 394; 1880, § 154; 1892, § 3681; 1906, § 4188; Hemingway's 1917, § 6822; 1930, § 6262; 1942, § 3291; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 248; Laws, 2017, ch. 441, § 132, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment rewrote the section, which read: "When a vacancy other than in the Legislature shall occur, by death, resignation or otherwise, in any state or state district office, which is elective, and there is no special provision of law for the filling of said vacancy, the same shall be filled for the unexpired term by appointment by the Governor."

RESEARCH REFERENCES

**Am. Jur.**
26 Am. Jur. 2d, Elections §§ 214, 215.

**CJS.**
29 C.J.S., Elections §§ 296, 297.

## § 23-15-832. Notice to Secretary of State of vacancy in office for which special election is required to be called to fill.

When a vacancy shall occur in an elective office for which a special election is required to be called to fill, the entity with whom candidates for the office are required to qualify shall notify the Secretary of State of the vacancy within five (5) days after it receives knowledge of the vacancy.

**HISTORY:**
Laws, 2008, ch. 528, § 2, eff August 7, 2008 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section).

**Editor's Notes —**
On August 7, 2008, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the enactment of this section by Laws of 2008, ch. 528.

## § 23-15-833. Special elections to fill vacancies in county, county district, and district attorney offices, and office of circuit judge or chancellor.

Except as otherwise provided by law, the first Tuesday after the first Monday in November of each year shall be designated the regular special election day, and on that day an election shall be held to fill any vacancy in county, county district, and district attorney elective offices, and any vacancy in the office of circuit judge or chancellor.

All special elections, or elections to fill vacancies, shall in all respects be held, conducted and returned in the same manner as general elections, except that where no candidate receives a majority of the votes cast in the election, a runoff election shall be held three (3) weeks after the election. The two (2) candidates who receive the highest popular votes for the office shall have their names submitted as the candidates to the runoff and the candidate who leads in the runoff election shall be elected to the office. When there is a tie in the first election of those receiving the next highest vote, these two (2) and the one receiving the highest vote, none having received a majority, shall go into the runoff election and whoever leads in the runoff election shall be entitled to the office.

In those years when the regular special election day shall occur on the same day as the general election, the names of candidates in any special election and the general election shall be placed on the same ballot, but shall be clearly distinguished as general election candidates or special election candidates. At any time a special election is held on the same day as a party primary election, the names of the candidates in the special election may be placed on the same ballot, but shall be clearly distinguished as special election candidates or primary election candidates.

**HISTORY:**

Derived from 1972 Code § 23-5-203 [Codes, 1880, § 158; 1892, § 3685; 1906, § 4193; Hemingway's 1917, § 6827; 1930, § 6267; 1942, § 3296; Laws, 1954, ch. 356; Laws, 1984, ch. 465, § 1; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 249; Laws, 2007, ch. 434, § 1; Laws, 2011, ch. 509, § 3; Laws, 2017, ch. 441, § 133, eff from and after July 1, 2017.

**Joint Legislative Committee Note —**

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the last sentence of the second paragraph. The word "the" was added preceding "next highest vote" so that "election of those receiving next highest vote" reads "election of those receiving the next highest vote." The Joint Committee ratified the correction at its August 5, 2008, meeting.

**Editor's Notes —**

On June 15, 2007, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2007, ch. 434.

By letter dated July 26, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2011, ch. 509.

**Amendment Notes —**

The 2017 amendment divided the former first sentence of the second paragraph into the present first and second sentences; and made minor stylistic changes.

**Cross References —**

Person appointed by Governor to serve as district attorney to fill vacancy until election can be held may practice law privately while serving, see §§ 25-31-35, 25-31-36, and 25-31-39.

## JUDICIAL DECISIONS

### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-5-203.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-5-203.**

The trial court improperly denied relief in a suit to enjoin the use of certain county election districts on the ground that they perpetuated dilution of black voting strength where the unresponsiveness of officials to the needs of black citizens and the residual effects of past discrimination were evidenced by, inter alia, the poll tax, the literacy requirement, the property requirement for county officers, and the electoral mechanism of majority vote requirements. United States v. Board of Supervisors, 571 F.2d 951, 1978 U.S. App. LEXIS 11515 (5th Cir. Miss. 1978).

See Day v. Board of Sup'rs, 184 Miss. 611, 185 So. 251, 1939 Miss. LEXIS 16 (Miss. 1939).

## OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 23-15-833 designates first Tuesday after first Monday in November of each year as "regular special election day." 1993 Miss. Op. Att'y Gen. 323.

Although a vacancy on a county board of supervisors will be filled pursuant to special election proceedings under this section, Miss. Code Section 23-15-839 requires that the remaining board members appoint an eligible person to serve the remaining portion of the unexpired term until the special election is conducted. 1997 Miss. Op. Att'y Gen. 536.

## RESEARCH REFERENCES

**ALR.**

Validity of Runoff Voting Election Methodology. 67 A.L.R.6th 609.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 209-211.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 249.

**CJS.**

20 C.J.S., Counties § 163.

29 C.J.S., Elections §§ 296, 297.

## § 23-15-835. Notice of special election for county or county district office; election procedures.

The election commissioners of the several counties to whom the writ of election may be directed shall, immediately upon receipt of the writ, give notice of the special election to fill a vacancy in such county or county district office by posting notices at the courthouse and in each supervisor's district in the county for ninety (90) days before the election; and the election shall be prepared for and held as in case of a general election.

**HISTORY:**

Derived from 1972 Code § 23-5-199 [Codes, 1880, § 155; 1892, § 3682; 1906, § 4191; Hemingway's 1917, § 6825; 1930, § 6265; 1942, § 3294; Laws, 1966, ch. 615, § 3; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 250; Laws, 2017, ch. 441, § 134, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment substituted "election commissioners" for "commissioners of election," "immediately upon receipt of the writ" for "immediately on the receipt thereof," and "before the election" for "prior to the election"; and made minor stylistic changes.

### JUDICIAL DECISIONS

#### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-5-199.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-5-199.**

Notice of local option election on question of outlawing wine and beer, given for thirty days in newspaper published and circulated in county, is correct and proper notice of election, since notice required to be given of such election is governed by Code 1942, § 3018, and not by this section [Code 1942, § 3294]. Duggan v. Board of Sup'rs, 207 Miss. 854, 43 So. 2d 566, 1949 Miss. LEXIS 396 (Miss. 1949).

See Day v. Board of Sup'rs, 184 Miss. 611, 185 So. 251, 1939 Miss. LEXIS 16 (Miss. 1939).

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 209-211.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 249.

**CJS.**

20 C.J.S., Counties § 163.

29 C.J.S., Elections §§ 296, 297.

## § 23-15-837. Procedure where only one person has qualified for candidacy in special election for state district office or legislative office.

(1) When a special election is called to fill any state district office or legislative office and where only one (1) person has duly qualified with the State Board of Election Commissioners to be a candidate in the special election within the time prescribed by law for qualifying as a candidate, the State Board of Election Commissioners shall make a finding and determination of that fact, which shall be duly entered upon its official minutes.

(2) A finding and determination and certification to office by the State Board of Election Commissioners, as herein provided, shall dispense with the holding of the special election.

(3) A certified copy of the finding and determination of the State Board of

Election Commissioners shall be filed with the Governor, and the Governor shall appoint the candidate so certified to fill the unexpired term.

**HISTORY:**

Derived from 1972 Code § 23-5-196 [Laws, 1979, ch. 343, §§ 1, 3; Laws, 1981, ch. 303, § 1; repealed by Laws, 1986, ch. 495, § 335]; Laws, 1986, ch. 495, § 251; Laws, 2017, ch. 441, § 135, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment, in (1), substituted "election is called" for "election shall have been called," inserted "or legislative office," and substituted "fact, which shall be duly" for "fact duly"; and made minor stylistic changes.

### OPINIONS OF THE ATTORNEY GENERAL

Since the special charter of the City of Columbus does not require that primaries be held to fill a vacancy of a municipal office, and there is no statutory requirement of such, there is no authority for primary elections to be held to fill a vacant councilman's seat. 1998 Miss. Op. Att'y Gen. 501.

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 209-211.

**CJS.**

29 C.J.S., Elections §§ 296, 297.

## § 23-15-839. Appointments to fill vacancies in county or county district offices; special election procedures; procedure where only one person has qualified for candidacy in special election.

(1) When a vacancy occurs in any county or county district office, the same shall be filled by appointment by the board of supervisors of the county, by order entered upon its minutes, where the vacancy occurs, or by appointment of the president of the board of supervisors, by and with the consent of the majority of the board of supervisors, if such vacancy occurs when the board is not in session, and the clerk of the board shall certify to the Secretary of State the appointment, and the appointed person shall be commissioned by the Governor; and if the unexpired term be longer than six (6) months, such appointee shall serve until a successor is elected as hereinafter provided, unless the regular special election day on which the vacancy should be filled occurs in a year in which an election would normally be held for that office as provided by law, in which case the person so appointed shall serve the unexpired portion of the term. Such vacancies shall be filled for the unexpired term by the qualified electors at the next regular special election day occurring more than ninety (90) days after the vacancy occurs. The board of supervisors of the county shall, within ten (10) days after the vacancy occurs, make an order, in writing, directed to the election commissioners, commanding an election to be held on the next regular special election day to fill the vacancy. The election commissioners shall require each candidate to qualify at least sixty (60) days before the date of the election, and shall give a certificate of election to the person elected, and shall return to the Secretary of State a copy of the order of holding the election, showing the election results, certified by the clerk of the board of supervisors. The person elected shall be commissioned by the Governor to take office once the election is certified.

(2) In any election ordered pursuant to this section where only one (1)

person qualifies with the election commissioners to be a candidate within the time provided by law, the election commissioners shall certify to the board of supervisors that there is only one (1) candidate. Thereupon, the board of supervisors shall dispense with the election and appoint the certified candidate to fill the unexpired term. The clerk of the board shall certify the appointed candidate to the Secretary of State and the candidate shall be commissioned by the Governor. In the event no person qualifies by 5:00 p.m. sixty (60) days before the date of the election, the election commissioners shall certify that fact to the board of supervisors who shall dispense with the election and fill the vacancy by appointment. The clerk of the board of supervisors shall certify the appointment to the Secretary of State, and the appointed person shall be commissioned by the Governor.

**HISTORY:**

Derived from 1972 Code § 23-5-197 [Codes, 1906, § 4189; Hemingway's 1917, § 6823; 1930, § 6263; 1942, § 3292; Laws, 1900, ch. 79; Laws, 1948, ch. 259; Laws, 1958, ch. 542; Laws, 1966 ch. 615, § 1; Laws, 1984, ch. 465, § 2; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 252; Laws, 1987, ch. 499, § 17; Laws, 1993, ch. 303, § 1; Laws, 2000, ch. 592, § 12; Laws, 2017, ch. 441, § 136, eff from and after July 1, 2017.

**Editor's Notes —**

Laws of 1987, ch. 499, § 20, provides as follows:

"SECTION 20. If any section, paragraph, sentence, clause or phrase of this act is declared to be unconstitutional or void, or for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses or phrases shall be in no manner affected thereby but shall remain in full force and effect."

The United States Attorney General, by letter dated March 19, 1993, interposed no objection to the amendment of this section by Laws of 1993, ch. 303, § 1.

On July 28, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 592.

**Amendment Notes —**

The 2017 amendment, in (1), substituted "vacancy occurs" for "vacancy shall occur," "the appointment, and the appointed person shall" for "the fact of the appointment, and the person so appointed shall," "election commissioners" for "commissioners of election," and "showing the election results, certified" for "showing the results thereof, certified," and added "to take office once the election is certified" at the end; rewrote (2), which read: "In any election ordered pursuant to this section where only one (1) person shall have qualified with the commissioners of election to be a candidate within the time provided by law, the commissioners of election shall certify to the board of supervisors that there is but one (1) candidate. Thereupon, the board of supervisors shall dispense with the election and shall appoint the candidate so certified to fill the unexpired term. The clerk of the board shall certify to the Secretary of State the candidate so appointed to serve in said office and that candidate shall be commissioned by the Governor. In the event that no person shall have qualified by 5:00 p.m. sixty (60) days prior to the date of the election, the commissioners of election shall certify that fact to the board of supervisors which shall dispense with the election and fill the vacancy by appointment. The clerk of the board of supervisors shall certify to the Secretary of State the fact of the appointment, and the person so appointed shall be commissioned by the Governor"; and made minor stylistic changes.

**Cross References —**

Provision that candidates in a special election to fill a vacancy in the office of district attorney shall qualify in the same manner and be subject to the same time limitations as set forth in this section, see § 23-15-843.

## JUDICIAL DECISIONS

### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-5-197.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-5-197.**

The trial court improperly denied relief in a suit to enjoin the use of certain county election districts on the ground that they perpetuated dilution of black voting strength where the unresponsiveness of officials to the needs of black citizens and the residual effects of past discrimination were evidenced by, inter alia, the poll tax, the literacy requirement, the property requirement for county officers, and the electoral mechanism of majority vote requirements. United States v. Board of Supervisors, 571 F.2d 951, 1978 U.S. App. LEXIS 11515 (5th Cir. Miss. 1978).

### OPINIONS OF THE ATTORNEY GENERAL

Vacancy on county board of supervisors must be filled in accordance with Miss. Code Section 23-15-839 which requires remaining members of board of supervisors to appoint eligible person to serve on interim basis until special election is conducted to elect someone to serve remainder of term. 1993 Miss. Op. Att'y Gen. 323.

Miss. Code Section 23-15-839 sets forth procedure for conducting special elections to fill vacancies in county and district offices. 1993 Miss. Op. Att'y Gen. 391.

Although a vacancy on a county board of supervisors will be filled pursuant to special election proceedings under Miss. Code Section 23-15-833, this section requires that the remaining board members appoint an eligible person to serve the remaining portion of the unexpired term until the special election is conducted. 1997 Miss. Op. Att'y Gen. 536.

When a justice court judge resigns, the vacancy should be filled in accordance with this section; Section 9-11-31 is to be used only when the justice court judge's office is temporarily vacant due to suspension or disability. 1999 Miss. Op. Att'y Gen. 128.

If in a special election for county election commissioner there is only one qualified candidate, then by following the provisions of Section 23-15-839(2) the election commission may dispense with the special election without regard to a general election for county school board member offices. 2005 Miss. Op. Att'y Gen. 315.

If it is determined that a candidate for the office of justice court judge is a resident of the district he seeks to serve and is a registered voter of the county and is not otherwise disqualified, he would be entitled to have his name placed on the ballot even if the address given on his qualifying papers does not match his actual residence. 2005 Miss. Op. Att'y Gen. 490.

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 209-211.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 249.

**CJS.**

20 C.J.S., Counties § 163.

29 C.J.S., Elections §§ 296, 297.

## § 23-15-841. Repealed.

Repealed by Laws of 2017, ch. 441, § 201, effective from and after July 1, 2017.

§ 23-15-541. [Derived from 1972 Code § 3157 [Codes, 1906, § 3713; Hemingway's 1917, § 6405; 1930, § 5910; repealed by Laws, 1986, ch. 495, § 346]; en, Laws, 1986, ch. 495, § 253, eff from and after January 1, 1987.]

**Editor's Notes —**

Former § 23-15-841 provided for the holding of a primary election in special elections for county and county district seats.

## § 23-15-843. Special elections to fill vacancies in office of district attorney; emergency appointments.

In case of death, resignation or vacancy from any cause in the office of district attorney, the unexpired term of which shall exceed six (6) months, the Governor shall within ten (10) days after the vacancy occurs issue a proclamation calling an election to fill a vacancy in the office of district attorney to be held on the next regular special election day in the district where the vacancy occurred unless the vacancy occurs in a year in which a general election would normally be held for that office as provided by law, in which case the appointed person shall serve the unexpired portion of the term. Candidates in such a special election shall qualify in the same manner and be subject to the same time limitations as set forth in Section 23-15-839. Pending the holding of a special election, the Governor shall make an emergency appointment to fill the vacancy until the same shall be filled by election.

**HISTORY:**

Derived from 1972 Code § 23-5-233 [Codes, Hemingway's 1917, § 6840; 1930, § 6283; 1942, § 3312; Laws, 1914, ch. 150; Laws, 1973, ch. 362, § 1; Laws, 1981, ch. 314, § 1; Laws, 1984, ch. 465, § 3; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 254; Laws, 2017, ch. 441, § 137, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment rewrote the first sentence, which read: "In case of death, resignation or vacancy from any cause in the office of district attorney, the unexpired term of which shall exceed six (6) months, the Governor shall within ten (10) days after happening of such vacancy issue his proclamation calling an election to fill a vacancy in the office of district attorney to be held on the next regular special election day in the district wherein such vacancy shall have occurred unless the vacancy shall occur before ninety (90) days prior to the general election in a year in which an election would normally be held for that office as provided by law, in which case the person so appointed shall serve the unexpired portion of the term"; and made minor stylistic changes.

**Cross References —**

Person appointed by Governor to serve as district attorney to fill vacancy until election can be held may practice law privately while serving, see §§ 25-31-35, 25-31-36, and 25-31-39.

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 209-211.

**CJS.**

29 C.J.S., Elections §§ 296, 297.

## §§ 23-15-845 and 23-15-847. Repealed.

Repealed by Laws, 1994, ch. 564, § 102, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the repeal of this section).

§ 23-15-845. Derived from 1972 Code § 3150 [Codes, Hemingway's 1917, § 6430; 1930, § 5903; Laws, 1916, ch. 616; Repealed by Laws 1986, ch. 495, § 346]; En, Laws, 1986, ch. 495, § 255 [Am Laws, 1993, ch. 518, § 27]

§ 23-15-847. Derived from 1972 Code § 23-3-61 [Codes, 1942, § 3190; Laws, 1935, ch. 19; Repealed by Laws, 1986, ch. 495, § 333]; En, Laws, 1986, ch. 495, § 256 [Am Laws, 1993, ch. 518, § 28]

**Editor's Notes —**

Former § 23-15-845 was entitled: Primary elections for nomination of candidates to fill vacancies in office of judge of Supreme Court and Court of Appeals.

Former § 23-15-847 was entitled: Vacancy nominations for office of judge of Supreme Court, Court of Appeals, circuit judge or chancellor.

The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the repeal of these sections by Laws of 1994, ch. 564, § 102.

### § 23-15-849. Special elections to fill vacancies in office of justice of Supreme Court, judge of Court of Appeals, circuit judge, or chancellor; interim appointments.

(1) Vacancies in the office of circuit judge or chancellor shall be filled for the unexpired term by the qualified electors at the next regular special election occurring more than nine (9) months after the vacancy to be filled occurred, and the term of office of the person elected to fill a vacancy shall commence on the first Monday in January following the election. Upon the occurrence of a vacancy, the Governor shall appoint a qualified person from the district in which the vacancy exists to hold the office and discharge the duties thereof until the vacancy is filled by election as provided in this subsection.

(2)(a) If half or more than half of the term remains, vacancies in the office of justice of the Supreme Court or judge of the Court of Appeals shall be filled for the unexpired term by the qualified electors at the next regular election for state officers or for representatives in Congress occurring more than nine (9) months after the vacancy to be filled occurred, and the term of office of the person elected to fill a vacancy shall commence on the first Monday in January following the election. If less than half of the term remains, vacancies in the office of justice of the Supreme Court or judge of the Court of Appeals shall be filled for the remaining unexpired term solely by appointment as provided in this subsection.

(b) Upon occurrence of a vacancy, the Governor shall appoint a qualified person from the district in which the vacancy exists to hold the office and discharge the duties thereof as follows:

(i) If less than half of the term remains, the appointee shall serve until expiration of the term;

(ii) If half or more than half of the term remains, the appointee shall serve until the vacancy is filled by election as provided in subsection (1) of this section for judges of the circuit and chancery courts. Elections to fill vacancies in the office of justice of the Supreme Court or judge of the Court of Appeals shall be held, conducted, returned and the persons elected commissioned in accordance with the law governing regular elections for justices of the Supreme Court or judges of the Court of Appeals to the extent applicable.

**HISTORY:**

Derived from 1972 Code § 23-5-247 [Codes, Hemingway's 1917, § 6855; 1930, § 6287; 1942, §§ 3190, 3316; Laws, 1916, ch. 161; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 257; Laws, 1993, ch. 518, § 29; Laws, 2002, ch. 586, § 1; Laws, 2011, ch. 509, § 4; Laws, 2017, ch. 441, § 138, eff from and after July 1, 2017.

**Editor's Notes —**

Laws of 1993, ch. 518, § 45, provides as follows:

"SECTION 45. Section 32 of this act shall take effect and be in force from and after its passage and the remainder of this act shall take effect and be in force from and after July 2, 1993, or the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, whichever is later."

On July 13, 1993, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended to the amendment of this section by Laws of 1993, ch. 518.

The United States Attorney General, by letter dated July 2, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2002, ch. 586.

By letter dated July 26, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2011, ch. 509.

**Amendment Notes —**

The 2017 amendment substituted "after the vacancy to be filled occurred" for "after the existence of the vacancy to be filled" once in (1) and once in (2), "justice of the Supreme Court or judge of the Court of Appeals" for "judge of the Supreme Court or Court of Appeals" twice in (2)(a) and once in (2)(b)(ii), and "vacancy is filled" for "vacancy shall be filled" at the end of (1) and in the first sentence of (2)(b)(ii); substituted "justices of the Supreme Court or judges of the Court of Appeals to the extent applicable" for "judges of the Supreme Court or Court of Appeals insofar as they may be applicable at the end of (2)(b)(ii); deleted (2)(c), which read: "This subsection (2) shall apply to all gubernatorial appointees to the Supreme Court or Court of Appeals who have not stood for special election as of July 2, 2002, as if Laws, 2002, Chapter 586, were in full force and effect on the day of each of their appointments"; and made minor stylistic changes.

**Cross References —**

Appointment to judicial office upon vacancy, see § 9-1-103.

Application of this section to the filling of vacancies in Court of Appeals, see § 9-4-5.

## JUDICIAL DECISIONS

**1. Write-in election.**

Write-in election for a circuit court judge was proper under Miss. Code Ann. § 23-15-365 because the circuit judge passed away after qualifying for the November 2, 2010 election, and Miss. Code Ann. § 9-1-103 permitted the appointee judge to serve for the unexpired term with no requirement of a special election since the circuit judge died fewer than nine months before the expiration of his term; the use of the word "or" in Miss. Code Ann. § 9-1-103 means that an election under Miss. Code Ann. § 23-15-849(1) need not occur if there is so little time in the unexpired term that the appointee may legally serve for the unexpired term. Rayner v. Barbour, 47 So. 3d 128, 2010 Miss. LEXIS 572 (Miss. 2010).

## RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 209-211.

**CJS.**

29 C.J.S., Elections §§ 296, 297.

**Law Reviews.**

The Least of Evils for Judicial Selection, 21 Miss. C. L. Rev. 209, Spring, 2002.

## § 23-15-851. Elections to fill vacancies in offices in Legislature; notice.

(1) Except as otherwise provided in subsection (2) of this section, within thirty (30) days after vacancies occur in either house of the Legislature, the Governor shall issue writs of election to fill the vacancies on a day specified in the writ of election. At least sixty (60) days' notice shall be given of the election in each county or part of a county in which the election shall be held. The qualifying deadline for the election shall be fifty (50) days before the election. Notice of the election shall be posted at the courthouse and in each supervisors district in the county or part of county in which such election shall be held for as near sixty (60) days as may be practicable. The election shall be prepared for and held as in the case of a general election.

(2) If a vacancy occurs in a calendar year in which the general election for state officers is held, the Governor may elect not to issue a writ of election to fill the vacancy.

**HISTORY:**

Derived from 1972 Code § 23-5-201 [Codes, 1857, ch 4, art 29; 1871, § 395; 1880, § 157; 1892, § 3684; 1906, § 4192; Hemingway's

1917, § 6826; 1930, § 6266; 1942, § 3295; Laws, 1956, ch. 405, § 1; Repealed by Laws, 1986, ch. 495, § 335]; Laws, 1986, ch. 495, § 258; Laws, 2007, ch. 570, § 1; Laws, 2017, ch. 441, § 139, eff from and after July 1, 2017.

**Editor's Notes —**

On September 10, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2007, ch. 570.

**Amendment Notes —**

The 2017 amendment, in (1), substituted "sixty (60)" for "forty (40)" twice and "fifty (50)" for "thirty (30)" once, and made a minor stylistic change; and substituted "occurs in a calendar year" for "occurs on or after June 1 of a year" in (2).

**Cross References —**

Provision that, in special elections conducted under the provisions of this section, the commissioner shall have printed on the ballot the names of persons who have been requested to be candidates by timely petition, see § 23-15-359.

## RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 209-211.

**CJS.**

29 C.J.S., Elections §§ 296, 297.

## § 23-15-853. Special elections to fill vacancies in representation in Congress; notice; qualification by candidates.

(1) If a vacancy occurs in the representation in Congress, the vacancy shall be filled for the unexpired term by a special election, to be ordered by the Governor, within sixty (60) days after the vacancy occurs, and held at a time fixed by his or her order, and which time shall be not less than sixty (60) days after the issuance of the order of the Governor, which shall be directed to the election commissioners of the several counties of the district, who shall, immediately on the receipt of the order, give notice of the election by publishing the same in a newspaper having a general circulation in the county and by posting the notice at the front door of the courthouse. The order shall also be directed to the State Board of Election Commissioners. The election shall be prepared for and conducted, and returns shall be made, in all respects as provided for a special election to fill vacancies.

(2) Candidates for the office in such an election must qualify with the Secretary of State by 5:00 p.m. not less than fifty (50) days before the date of the election. If the fiftieth day to qualify before an election falls on a Sunday or legal holiday, the qualification submitted on the business day immediately following the Sunday or legal holiday shall be accepted. The election commissioners shall have printed on the ballot in such special election the name of any candidate who shall have been requested to be a candidate for the office by a petition filed with the Secretary of State and personally signed by not less than one thousand (1,000) qualified electors of the district. The petition shall be filed by 5:00 p.m. not less than fifty (50) days before the date of the election. If the fiftieth day to file the petition before an election falls on a Sunday or legal holiday, the petition filed on the business day immediately following the Sunday or legal holiday shall be accepted.

There shall be attached to each petition above provided for, upon the time of filing with the Secretary of State, a certificate from the appropriate registrar or registrars showing the number of qualified electors appearing upon each petition which the registrar shall furnish to the petitioner upon request.

**HISTORY:**

Derived from 1972 Code § 23-5-221 [Codes, 1857, ch. 4, art 35; 1871, § 361; 1880, § 162; 1892, § 3689; 1906, § 4196; Hemingway's 1917, § 6830; 1930, § 6275; 1942, § 3304; Laws, 1968 ch. 572, §§ 1, 2; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 259; Laws, 2000, ch. 592, § 13; Laws, 2007, ch. 604, § 5; Laws, 2017, ch. 441, § 140, eff from and after July 1, 2017.

**Editor's Notes —**

On July 28, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 592.

On September 10, 2007, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2007, ch. 604.

**Amendment Notes —**

The 2017 amendment substituted "election commissioners" for "commissioners of election" everywhere it appears; substituted "vacancy occurs" for "vacancy happens" in (1); in (2), substituted "fifty (50) days before" for "forty-five (45) days previous to" in the first and fourth sentences, and added the second and last sentences; and made gender neutral and minor stylistic changes.

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 209-211.
77 Am. Jur. 2d, United States § 9.

**CJS.**

29 C.J.S., Elections §§ 296, 297.
91 C.J.S., United States § 20.

## § 23-15-855. Elections to fill vacancies in office of U.S. Senator; interim appointments by Governor.

(1) If a vacancy shall occur in the office of United States Senator from Mississippi by death, resignation or otherwise, the Governor shall, within ten (10) days after receiving official notice of the vacancy, issue a proclamation for an election to be held in the state to elect a Senator to fill the remaining unexpired term, provided the unexpired term is more than twelve (12) months and the election shall be held within ninety (90) days from the time the proclamation is issued and the returns of such election shall be certified to the Governor in the manner set out above for regular elections, unless the vacancy occurs in a year in which a general state or congressional election is held, in which event the Governor's proclamation shall designate the general election day as the time for electing a Senator, and the vacancy shall be filled by appointment as hereinafter provided.

(2) In case of a vacancy in the office of United States Senator, the Governor may appoint a Senator to fill the vacancy temporarily, and if the United States Senate be in session at the time the vacancy occurs the Governor shall appoint a Senator within ten (10) days after receiving official notice thereof, and the appointed Senator shall serve until a successor is elected and commissioned as provided for in subsection (1) of this section, provided that such unexpired term as he or she may be appointed to fill shall be for a longer time than one (1) year, but if for a shorter time than one (1) year, he or she shall serve for the full time of the unexpired term and no special election shall be called by the Governor but a successor shall be elected at the regular election.

**HISTORY:**

Derived from 1972 Code § 23-5-229 [Codes, Hemingway's 1917, § 6835; 1930, § 6279; 1942, § 3308; Laws, 1914, ch. 148] and § 23-5-231 [Codes, Hemingway's 1917, § 6836; 1930, § 6280; 1942, § 3309; Laws, 1914, ch. 148], both repealed by Laws, 1986, ch. 495, § 335; en, Laws, 1986, ch. 495, § 260; Laws, 2017, ch. 441, § 141, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment, in (1), substituted "fill the remaining unexpired term, provided" for "fill such unexpired term as may remain, provided" and "vacancy occurs in a year in which" for "vacancy shall occur in a year that there shall be held," and inserted "is held"; substituted "and the appointed Senator shall" for "and the Senator so appointed shall" in (2); and made gender neutral and minor stylistic changes.

## JUDICIAL DECISIONS

**1. Construction and application.**

Miss. Code Ann. § 23-15-855 is silent regarding the situation in which a senatorial vacancy occurs after a general state or congressional election, and the statute fails to implement the specific power granted to the legislature by the Seventeenth Amendment for directing the filling of the vacancy by election. As such, the general power granted to the executive branch of the state by the Seventeenth Amendment to issue writs of election is controlling. Barbour v. State ex rel. Hood, 974 So. 2d 232, 2008 Miss. LEXIS 87 (Miss. 2008).

As portions of Miss. Code Ann. § 23-15-855 were ambiguous, and others silent, a writ of election issued by the Governor on December 20, 2007, designating November 4, 2008, as the general election day for electing a U.S. Senator to complete the term of office of a Senator who had resigned was not constitutionally infirm. The circuit court erred, as a matter of law, in deeming § 23-15-855 plain, clear, and unambiguous, and then finding the writ of election exceeded the Governor's constitutional and statutory authority. Barbour v. State ex rel. Hood, 974 So. 2d 232, 2008 Miss. LEXIS 87 (Miss. 2008).

## RESEARCH REFERENCES

**ALR.**

Validity, Construction, and Application of 17th Amendment to United States Constitution, Providing for Direct Election of Senators and Filling Vacancies in State's Senatorial Delegation. 68 A.L.R.6th 489.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 209-211.

77 Am. Jur. 2d, United States § 9.

**CJS.**

29 C.J.S., Elections §§ 296, 297.

91 C.J.S., United States § 20.

## § 23-15-857. Appointments to fill vacancies in elective offices in cities, towns, or villages; elections to fill such offices; procedure where no person or only one person has qualified as candidate.

(1) When there is a vacancy in an elective office in a city, town or village, the unexpired term of which shall not exceed six (6) months, the same shall be filled by appointment by the governing authority or remainder of the governing authority of the city, town or village. The municipal clerk shall certify the appointment to the Secretary of State and the appointed person or persons shall be commissioned by the Governor.

(2) When there is a vacancy in an elective office in a city, town or village, the unexpired term of which shall exceed six (6) months, the governing authority or remainder of the governing authority of the city, town or village shall make and enter on the minutes an order for an election to be held in the

city, town or village to fill the vacancy and fix a date upon which the election shall be held. The order shall be made and entered upon the minutes at the next regular meeting of the governing authority after the vacancy occurs, or at a special meeting to be held not later than ten (10) days after the vacancy occurs, Saturdays, Sundays and legal holidays excluded, whichever shall occur first. The election shall be held on a date not less than thirty (30) days nor more than forty-five (45) days after the date upon which the order is adopted.

Notice of the election shall be given by the municipal clerk by notice published in a newspaper published in the municipality. The notice shall be published once each week for three (3) successive weeks preceding the date of the election. The first notice shall be published at least thirty (30) days before the date of the election. Notice shall also be given by posting a copy of the notice at three (3) public places in the municipality not less than twenty-one (21) days before the date of the election. One (1) of the notices shall be posted at the city, town or village hall. In the event that there is no newspaper published in the municipality, such notice shall be published as provided for above in a newspaper that has a general circulation within the municipality and by posting as provided for above. Additionally, the governing authority may publish the notice in that newspaper for as many additional times as may be deemed necessary by the governing authority.

Each candidate shall qualify by petition filed with the municipal clerk by 5:00 p.m. at least twenty (20) days before the date of the election. If the twentieth day to file the petition before the election falls on a Sunday or legal holiday, the petition filed on the business day immediately following the Sunday or legal holiday shall be accepted. The petition shall be signed by not less than the following number of qualified electors:

(a) For an office of a city, town, village or municipal district having a population of one thousand (1,000) or more, not less than fifty (50) qualified electors.

(b) For an office of a city, town, village or municipal district having a population of less than one thousand (1,000), not less than fifteen (15) qualified electors.

No qualifying fee shall be required of any candidate, and the election shall be held as far as practicable in the same manner as municipal general elections.

The candidate receiving a majority of the votes cast in the election shall be elected. If no candidate receives a majority vote at the election, the two (2) candidates receiving the highest number of votes shall have their names placed on the ballot for the election to be held three (3) weeks thereafter. The candidate receiving a majority of the votes cast in the election shall be elected. However, if no candidate receives a majority and there is a tie in the election of those receiving the next highest vote, those receiving the next highest vote and the candidate receiving the highest vote shall have their names placed on the ballot for the election to be held three (3) weeks thereafter, and whoever receives the most votes cast in the election shall be elected.

Should the election held three (3) weeks thereafter result in a tie vote, the prevailing candidate shall be decided by a toss of a coin or by lot fairly and publicly drawn under the supervision of the election commission.

The clerk of the election commission shall then give a certificate of election to the person elected, and return to the Secretary of State a copy of the order of holding the election and runoff election results, certified by the clerk of the governing authority. The person elected shall be commissioned by the Governor.

However, if nineteen (19) days before the date of the election only one (1) person shall have qualified as a candidate, the governing authority, or remainder of the governing authority, shall dispense with the election and appoint that one (1) candidate in lieu of an election. In the event no person shall have qualified by 5:00 p.m. at least twenty (20) days before the date of the election, the governing authority or remainder of the governing authority shall dispense with the election and fill the vacancy by appointment. The clerk of the governing authority shall certify the appointment to the Secretary of State, and the appointed person shall be commissioned by the Governor.

**HISTORY:**

Derived from 1972 Code § 21-11-9 [Codes 1892, § 3031; 1906, § 3436; Hemingway's 1917, § 5996; 1930, § 2598; 1942, § 3374-64; Laws, 1950, ch. 491, § 64; Laws, 1971, ch. 494, § 1; repealed by Laws, 1986, ch. 495, § 329]; en, Laws, 1986, ch. 495, § 261; Laws, 2000, ch. 592, § 14; Laws, 2004, ch. 512, § 1; Laws, 2007, ch. 434, § 2; Laws, 2017, ch. 441, § 142, eff from and after July 1, 2017.

**Joint Legislative Committee Note —**

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the second paragraph of subsection (2). The word "govering" was changed to "governing." The Joint Committee ratified the correction at its December 3, 1996 meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the first sentence of the fourth paragraph from the end of subsection (2). The word "a", was deleted following "in" so that "the votes cast in a said election" will read "the votes cast in said election." The Joint Committee ratified the correction at its August 5, 2008, meeting.

**Editor's Notes —**

On July 28, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 592.

On August 19, 2004, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2004, ch. 512, § 1.

On June 15, 2007, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2007, ch. 434.

**Amendment Notes —**

The 2017 amendment, in (1), substituted "When there is a vacancy in an elective office in a city, town or village" for "When it shall happen that there is any vacancy in a city, town or village office which is elective," and rewrote the last sentence, which read: "The municipal clerk shall certify to the Secretary of State the fact of such appointment, and the person or persons so appointed shall be commissioned by the Governor"; in (2), in the first paragraph, substituted "When there is a vacancy" for "When it shall happen that there is any vacancy" in the first sentence, and substituted "vacancy occurs" for "vacancy shall have occurred" twice in the second sentence, in the second paragraph, substituted "as many additional times" for "such additional times" near the end, in the third paragraph, rewrote the introductory paragraph, which read: "Each candidate shall qualify by petition filed with the municipal clerk by 5:00 p.m. at least twenty (20) days before the date of the election and such petition shall be signed by not less than the following number of qualified electors," in (a) and (b), inserted "or municipal district" and made related changes, in the fourth paragraph, deleted "provided for herein" following "the election," in the fifth paragraph, substituted "three (3) weeks" for "two (2) weeks" twice, rewrote the sixth paragraph, which read: "Should the election to be held two (2) weeks thereafter result in a tie vote, the candidate to prevail shall be decided by lot, fairly and publicly drawn under the supervision by the election commission with the aid of two (2) or more qualified electors of the municipality," in the seventh paragraph, substituted "election results" for "election showing the results thereof," and in the last paragraph, substituted "before the date" for "prior to the date" twice, and rewrote the last sentence, which read: "The clerk of the governing authority shall certify to the Secretary of State the fact of the appointment, and the person so appointed shall be commissioned by the Governor"; and made gender neutral and minor stylistic changes throughout.

**Cross References —**

Applicability of this section to the filling of vacancies occurring in the council of a municipality operating under a mayor-council form of government, see § 21-8-7.

Provision that the ballot in elections to fill vacancies in municipal elective offices shall contain the names of all persons who have qualified as required by this section, see § 23-15-361.

## JUDICIAL DECISIONS

### ANALYSIS

1.-4. [Reserved for future use.]
5. Special elections.
6. Under former Section 21-11-9.
7. Under former Section 21-15-5.

**1.-4. [Reserved for future use.]**

**5. Special elections.**

Where the voters, residing in various wards within a city, alleged that the city violated the U.S. Constitution's one person, one vote principle by refusing to re-evaluate population deviations within the city's ward scheme in light of the 2000 decennial census figures and a 1993 annexation, and in failing for over 10 years to propose a redistricting plan to the United States Department of Justice that would pass constitutional muster and receive preclearance under § 5 of the Voting Rights Act, 42 U.S.C.S. § 1973c, the district court declared vacant the offices of city council and mayor, and the district court ordered a special election. The court found that the special election procedure in Miss. Code Ann. § 23-15-857 was remedially appropriate. Garrard v. City of Grenada, 2005 U.S. Dist. LEXIS 34350 (N.D. Miss. Sept. 7, 2005).

**6. Under former Section 21-11-9.**

One acting as mayor and municipal trial judge under appointment by governor because of absence of duly elected mayor in armed forces under indefinite leave of absence granted by board of aldermen, was at least a de facto officer, whose acts in connection with the trial and conviction in misdemeanor case were valid. Upchurch v. Oxford, 196 Miss. 339, 17 So. 2d 204, 1944 Miss. LEXIS 199 (Miss. 1944).

Contestant for municipal office need not go through form of qualifying for office until after contest has been determined. Hutson v. Miller, 148 Miss. 783, 114 So. 820, 1927 Miss. LEXIS 88 (Miss. 1927).

Where there has been no election and no successor to the mayor elected the present mayor will hold over during the next term of office. State ex rel. Booze v. Cresswell, 117 Miss. 795, 78 So. 770, 1918 Miss. LEXIS 223 (Miss. 1918).

A petition to place the name of an individual on a municipal ticket must be filed with the election commissioners or the commissioners will not be authorized to place his name on such ticket. State ex rel. Attorney Gen. v. Ratliff, 108 Miss. 242, 66 So. 538, 1914 Miss. LEXIS 195 (Miss. 1914).

Voters in a municipal election may vote for the person of their choice by writing such name on the ticket. State ex rel. Attorney Gen. v. Ratliff, 108 Miss. 242, 66 So. 538, 1914 Miss. LEXIS 195 (Miss. 1914).

Ch. 204 of the Laws of 1910 applied only to municipalities of 15,000 inhabitants or over. Mayor & Board of Aldermen of Water Valley v. State, 103 Miss. 645, 60 So. 576, 1912 Miss. LEXIS 192 (Miss. 1913).

In case a disqualified person be elected to a municipal office the previous incumbent will hold over until the next general election. State ex rel. Doolittle v. Hays, 91 Miss. 755, 45 So. 728, 1907 Miss. LEXIS 193 (Miss. 1907).

The previous incumbent of a municipal office will hold over until the next general election unless his successor is qualified to hold the office. State ex rel. Doolittle v. Hays, 91 Miss. 755, 45 So. 728, 1907 Miss. LEXIS 193 (Miss. 1907).

An election contest for the office of mayor has to be conducted as contest of state and county elections. Shines v. Hamilton, 87 Miss. 384, 39 So. 1008, 1905 Miss. LEXIS 152 (Miss. 1905).

It is unnecessary for a relator to have taken oath and executed bond or have offered to do so on or before the beginning of the term in order to maintain by quo warranto a contest for a municipal office with one usurping the same. State ex rel. Bourgeois v. Laizer, 77 Miss. 146, 25 So. 153, 1899 Miss. LEXIS 44 (Miss. 1899).

A town marshal is entitled under the provisions for the election of town officers and for the filling of vacancies in office, to hold over after the expiration of his term until his successor has been "duly elected and qualified," and may oust by quo warranto one whose induction into the office is illegal. Roane ex rel. Tunstall v. Matthews, 75 Miss. 94, 21 So. 665, 1897 Miss. LEXIS 88 (Miss. 1897).

A marshal is entitled to hold over after the expiration of his term until his successor has been "duly elected and qualified," and may oust by quo warranto one whose induction into the office is illegal because when elected he had not paid "taxes legally required of him" for the preceding year. Roane ex rel. Tunstall v. Matthews, 75 Miss. 94, 21 So. 665, 1897 Miss. LEXIS 88 (Miss. 1897).

**7. Under former Section 21-15-5.**

One acting as mayor and municipal trial judge under appointment by governor because of absence of duly elected mayor in armed forces under indefinite leave of absence granted by board of aldermen, was at least a de facto officer, whose acts in connection with the trial and conviction in misdemeanor case were valid. Upchurch v. Oxford, 196 Miss. 339, 17 So. 2d 204, 1944 Miss. LEXIS 199 (Miss. 1944).

Where there has been no election and no successor to the mayor elected the present mayor will hold over during the next term of office. State ex rel. Booze v. Cresswell, 117 Miss. 795, 78 So. 770, 1918 Miss. LEXIS 223 (Miss. 1918).

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## OPINIONS OF THE ATTORNEY GENERAL

Miss. Code Section 23-15-857(1) means City Council shall appoint, and Mayor shall confirm or veto, appointment of replacement for vacant City Council seat. 1993 Miss. Op. Att'y Gen. 289.

The statute applies to special elections to fill vacancies in municipal offices; it does not apply to municipal general elections. 2001 Miss. Op. Att'y Gen. 163.

There is no authority for an appointment to fill a vacancy where the unexpired term exceeds six months. 2001 Miss. Op. Att'y Gen. 163.

If a town forgoes holding a general election in the event no person qualifies to run in that election, the incumbent officials would hold over after the expiration of their regular terms of office until such time as new officers are elected; further any action taken by those officers during this hold-over period would be valid and binding as official acts. 2001 Miss. Op. Att'y Gen. 254.

As the Special Charter of a city contains provisions which establish the time frame in which a special election to fill a vacancy shall be held, there is no need to refer to general law, and the provisions of the Charter would control. 2003 Miss. Op. Att'y Gen. 269.

If only one person qualifies to run for office to fill a vacancy in a special charter municipality as of the day after the date established for qualification, the governing authorities of the city would have the authority to fill the vacancy by appointment of the person who has qualified, without having the election. 2003 Miss. Op. Att'y Gen. 269.

Any action taken or votes cast concerning municipal matters prior to receiving preclearance of a special election by an alderman elected in said election would be valid. 2003 Miss. Op. Att'y Gen. 547.

Where a vacancy exists on a town board of alderman which has persisted for several months without being filled as required by this section, and a quorum of the board has failed to meet to conduct the necessary business of the town, as a way of moving the apparent impasse, the mayor should set at the next and subsequent meetings of the board as the first item on the agenda the matter of filling the vacancy on the board by declaring the vacancy and ordering a special election to be held between 30 and 45 calendar days after the date of the order and fill the vacancy. 2004 Miss. Op. Att'y Gen. 145.

An incumbent alderman who served for the preceding term in an office for which no candidate has filed a valid qualifying petition for the upcoming term could "hold over" in accordance with Sections 21-15-1 and 25-1-7, until a special election to fill a vacancy is held as required by Section 23-15-857, assuming his bond remains in effect. 2005 Miss. Op. Att'y Gen. 216.

A candidate could establish his residence within the corporate limits 30 days before the election and then file his qualifying papers at least 20)days prior to the municipal special election and be eligible to have his name placed on the ballot. 2006 Miss. Op. Att'y Gen. 400.

Where a city charter does not contain a specific timetable for setting the date of a special election, Section 23-15-857 should be followed. 2006 Miss. Op. Att'y Gen. 400.

There is no authority for municipal governing authorities to remove or suspend an elected police chief based on an indictment. A municipal governing authority may make the police chief or other municipal officers appointive, rather than elective, by adopting an ordnance, not within 90 days of an election, that will become effective when the current officer's term expires. If an elected Chief of Police resigns or is disqualified from his position and the remainder of the term is over 6 months, the City must hold a special election to fill the vacancy pursuant to Miss. Code Ann. § 23-15-857. 2007 Miss. Op. Att'y Gen. 137, 2007 Miss. AG LEXIS 116.

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 209-211.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 249.

**CJS.**

29 C.J.S., Elections §§ 296, 297.

## § 23-15-859. Date of special municipal election; notice.

Whenever under any statute a special election is required or authorized to be held in any municipality, and the statute authorizing or requiring the election does not specify the time within which the election shall be called, or the notice which shall be given, the governing authorities of the municipality shall, by resolution, fix a date upon which the election shall be held. The date shall not be less than twenty-one (21) nor more than thirty (30) days after the date upon which such resolution is adopted, and not less than three (3) weeks' notice of the election shall be given by the clerk by a notice published in a newspaper published in the municipality once each week for three (3) weeks next preceding the date of the election, and by posting a copy of the notice at three (3) public places in the municipality. Nothing herein, however, shall be applicable to elections on the question of the issuance of the bonds of a municipality or to general or primary elections for the election of municipal officers.

The provisions of this section shall be applicable to all municipalities of this state, whether operating under a code charter, special charter or the commission form of government, except in cases of conflicts between the provisions of the section and the provisions of the special charter of a municipality, or the law governing the commission form of government, in which cases of conflict the provisions of the special charter or the statutes relative to the commission form of government shall apply.

**HISTORY:**

Derived from 1972 Code § 21-11-11 [Codes, 1942, § 3374-108; Laws, 1950, ch. 491, § 108; repealed by Laws, 1986, ch. 495, § 329]; en, Laws, 1986, ch. 495, § 262; Laws, 2017, ch. 441, § 143, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment added the last paragraph; and made minor stylistic changes.

### OPINIONS OF THE ATTORNEY GENERAL

As the Special Charter of a city contain provisions which establish the time frame in which a special election to fill a vacancy shall be held, there is no need to refer to general law, and the provisions of the Charter would control. 2003 Miss. Op. Att'y Gen. 269.

While a city's special charter provides for a time frame in which to hold a special election to fill a vacancy in a municipal office, but is silent as to the proper publication of such election, using Section 23-15-859 as guidance on the question of publication is reasonable and within the authority of the governing authorities of the city. 2003 Miss. Op. Att'y Gen. 269.

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 209-211.

56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 249.

**CJS.**

29 C.J.S., Elections §§ 296, 297.

# ARTICLE 27.

# REGULATION OF ELECTIONS.

Sec.
23-15-871. General prohibitions with respect to employers, employees, and public officials.
23-15-873. Prohibitions against promises of public positions or employment, public contracts, or public expenditures; exceptions; violation of section constitutes violation of Section 97-13-37.
23-15-874. Prohibition against use of court personnel in judicial campaigns; violations.
23-15-875. Prohibitions against charges with respect to integrity of candidate.
23-15-877. Prohibitions against newspaper editorials and stories with respect to integrity of candidate; newspaper's obligation to print reply; liability for damages.
23-15-879. Exemption of newspapers and other publications from requirements as to subscription of printed matter.
23-15-881. Prohibitions against excessive expenditures or hiring of workers for state highways or public roads; maintenance of records.
23-15-883. Exceptions to prohibitions with respect to state highway or public road expenditures or employment.
23-15-885. Prohibitions against excessive expenditures or hiring of workers for streets of municipalities.
23-15-887. Penalties for violation of chapter by member of Mississippi Transportation Commission, member of board of supervisors, or mayor or member of board of aldermen or other governing authority of municipality.
23-15-889. Prohibitions against buying or selling vote or offering to do so; penalties.
23-15-891. Prohibition against provision of free services or services at reduced rates by common carriers, Internet service providers, or telephone companies; requirement of sworn statement.
23-15-893. Repealed.
23-15-895. Prohibition against distribution of campaign material within 150 feet of polling place; prohibition against appearance of certain persons at polling place while armed, uniformed, or displaying badge or credentials; enforcement.
23-15-897. Certain information to be included in campaign materials; compliance with section for campaign materials published on electronic platform.
23-15-899. Repealed.
23-15-901. Electors' privilege from arrest.
23-15-903. Procedure for filing complaint of violation of election law.
23-15-905. Qualifying as candidate for more than one office prohibited under certain circumstances.

## § 23-15-871. General prohibitions with respect to employers, employees, and public officials.

(1) No corporation or any officer or employee thereof, or any member of a firm, or trustee or any member of any association, or any other employer, may direct or coerce, directly or indirectly, any employee to vote or not to vote for any particular person or group of persons in any election, or to discharge or to threaten to discharge any such employee, or to increase or decrease the salary or wages of an employee, or otherwise promote or demote the employee, because of his or her vote or failure to vote for any particular candidate or group of candidates.

(2) No employer, or employee having the authority to employ or discharge other employees, may make any statement public or private, or give out or circulate any report or statement, calculated to intimidate or coerce or otherwise influence any vote of an employee, and when any such statement has been circulated, it shall be the duty of the employer to publicly repudiate it or the employer shall be deemed by way of ratification to have made it himself or herself.

(3) No employee may be requested, directed or permitted to canvass for or against any candidate or render any other services for or against any candidate or group of candidates, during any of the hours within which the salary of the employee as an employee is being paid or agreed to be paid. No employee may be allowed any vacation or leave of absence at the expense of the employer to render any service or services for or against any candidate or group of candidates, or to take any active part in any election campaign whatsoever, except the necessary time to cast his or her vote.

(4) The prohibitions of this section shall apply to all state, state district, county and county district officers, and to any board or commission and the members thereof by whatever name designated and whether elective or appointive, and to each one of those employed by them or any of them.

(5) No state, state district, county or county district officer, or any employee who directly or indirectly has the control, or who asserts that he or she has such power, over the expenditure of any public funds in this state shall state, suggest or intimate, publicly or privately, or in any manner or form, that any such expenditure shall depend upon or be influenced by the vote of any person, group of persons, or community or group of communities, whether for or against any candidate or group of candidates at any election.

(6) This section and every part of it shall apply also to all federal officers, agents, employees, boards and commissions as to any interference contrary to the provisions of this chapter, in the elections of this state.

(7) Any violation of this section shall be a violation of Section 97-13-37 and shall be referred to a district attorney for prosecution.

**HISTORY:**

Derived from 1972 Code § 23-3-29 [Codes, 1942, § 3172; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, § 333]; en, Laws, 1986, ch. 495, § 263; Laws, 2017, ch. 441, § 180, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment divided the former first sentence into two sentences by substituting "group of candidates. (2) No employer" for "group of candidates; and likewise it shall be unlawful for any employer," and designated the first sentence (1) and the second sentence (2); designated the former second through fifth sentences (3) through (6), respectively; in (1), substituted "No corporation" for "It shall be unlawful for any corporation," "employer may direct" for "employer to direct," and "promote or demote the employee" for "promote or demote him"; in (2), substituted "employees may make any" for "employees to make any," "influence any vote of an employee, and when any such statement has been circulated, it shall be the duty of the employer to publicly repudiate it or the employer" for "influence any employee as to his vote, and when any such statement has obtained circulation, it shall be the duty of such employer to publicly repudiate it, in the absence of which repudiation the employer"; in (3), divided the former single sentence into two sentences by substituting "to be paid. No employee may be" for "to be paid; nor shall any such employee be," and deleted "nor shall any employee at the expense, in whole or in part, of any employer take any part whatever in any election campaign" following "election campaign whatsoever"; in (4), deleted "an every" following "and to each"; in (5), deleted "And" from the beginning and made a related change, substituted "or any employee who directly or indirectly has the control, or who asserts that he or she has such power, over the expenditure of any public funds in this state shall state" for "or any employee of any of them who directly or indirectly has the control, or in any way the power of control, or who asserts or pretends that he has such power, over the expenditure of any public funds in this state, whatever the purpose or object of said expenditure may be, shall state"; rewrote (6), which read: "This section and every part of it shall apply also to all federal officers, agents, employees, boards and commissions by whatever name known and to each and every one of those employed by them or any of them, as to any interference by them or any of them, contrary to the provisions of this chapter, in the elections of this state; added (7); and made gender neutral and minor stylistic changes.

## JUDICIAL DECISIONS

**1. In general.**

There was no basis for concluding that Miss. Code Ann. § 23-15-871 had been violated in case where there was no evidence that the incumbent candidate for county supervisor coerced two county employees to take time off in order to work on the incumbent's re-election campaign, and there was no evidence the two employees were not entitled to the vacation time they took. Straughter v. Collins, 819 So. 2d 1244, 2002 Miss. LEXIS 198 (Miss. 2002).

## OPINIONS OF THE ATTORNEY GENERAL

State employees may take personal leave to engage in political campaign activities. 1998 Miss. Op. Att'y Gen. 114.

As a general rule, public employees may engage in political activities when on personal leave, but any employee who engages in political activity proscribed by the statute while at work is subject to disciplinary action. 2000 Miss. Op. Att'y Gen. 42.

Nothing prohibits an incumbent public official from handing out campaign cards to voters who come into the courthouse, provided it does not interfere with the conduct of business. 2003 Miss. Op. Att'y Gen. 336.

Under state law, an employee of the Mississippi Development Authority may continue that employment during candidacy for an elective office. A state employee may take personal leave while running for office until exhausting all accrued personal leave and all lawfully accumulated compensatory leave, and then the appropriate appointing authority may lawfully grant a leave of absence without pay. 2007 Miss. Op. Att'y Gen. 82, 2007 Miss. AG LEXIS 23.

## RESEARCH REFERENCES

**ALR.**

Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 A.L.R.2d 1137.

Wrongful discharge based on public policy derived from professional ethics codes. 52 A.L.R.5th 405.

**Am. Jur.**
26 Am. Jur. 2d, Elections §§ 350, 359, 445-477.

**CJS.**
29 C.J.S., Elections §§ 575, 576, 578–583.

## § 23-15-873. Prohibitions against promises of public positions or employment, public contracts, or public expenditures; exceptions; violation of section constitutes violation of Section 97-13-37.

(1) No person, whether an officer or not, shall, in order to promote his or her own candidacy, or that of any other person, to be a candidate for public office in this state, directly or indirectly, himself, or herself or through another person, promise to appoint, or promise to secure or assist in securing the appointment, nomination or election of another person to any public position or employment, or to secure or assist in securing any public contract or the employment of any person under any public contractor, or to secure or assist in securing the expenditure of any public funds in the personal behalf of any particular person or group of persons, except that the candidate may publicly announce what is his or her choice or purpose in relation to an election in which he or she may be called on to take part if elected.

(2) It shall be unlawful for any person to directly or indirectly solicit or receive any promise by this section prohibited, but this does not apply to any person when it comes to their office force.

(3) Any violation of this section shall constitute a violation of Section 97-13-37 and shall be referred to the district attorney for prosecution.

**HISTORY:**
Derived from 1972 Code § 23-3-31 [Codes, 1942, § 3173; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, § 333]; en, Laws, 1986, ch. 495, § 264; Laws, 2017, ch. 441, § 144, eff from and after July 1, 2017.

**Amendment Notes —**
The 2017 amendment designated the former first sentence (1) and therein made gender neutral changes; combined and rewrote the former second and third sentences, which read: "It shall be unlawful for any person to directly or indirectly solicit or receive any promise by this section prohibited. But this does not apply to a sheriff, chancery clerk, circuit clerk, or any other person, of the state or county when it comes to their office force" and designated the resulting paragraph (2); and added (3).

### JUDICIAL DECISIONS

#### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-3-31.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-3-31.**
In a proceeding for judicial review for executive committee's order rescinding its order declaring the petitioner a nominee, the special tribunal did not have authority to determine that respondent, because of alleged violations of corrupt practices law, was disqualified from holding an office of supervisor and for that reason could not run for the Democratic primary and perhaps become a nominee for that office. Blakeney v. Mayfield, 226 Miss. 53, 83 So. 2d 748, 1955 Miss. LEXIS 606 (Miss. 1955).

RESEARCH REFERENCES

**ALR.**
Solicitation or receipt of funds by public officer or employee for political campaign expenses or similar purposes as bribery. 55 A.L.R.2d 1137.

**Am. Jur.**
26 Am. Jur. 2d, Elections §§ 350, 359, 445-477.

**CJS.**
29 C.J.S., Elections §§ 575, 576, 578–583

## § 23-15-874. Prohibition against use of court personnel in judicial campaigns; violations.

A candidate for judicial office shall not use court administrators, deputy court administrators, court reporters, deputy court reporters, judges' secretaries or law clerks as workers in his or her campaign activities. Violations of this section shall be referred to the Commission on Judicial Performance.

**HISTORY:**
Laws, 1999, ch. 301, § 5; Laws, 2017, ch. 441, § 145, eff from and after July 1, 2017.

**Editor's Notes —**
Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 301, § 5.

**Amendment Notes —**
The 2017 amendment added the last sentence; and made a gender neutral change.

## § 23-15-875. Prohibitions against charges with respect to integrity of candidate.

No person, including a candidate, shall publicly or privately make, in a campaign then in progress, any charge or charges reflecting upon the honesty, integrity or moral character of any candidate, so far as his or her private life is concerned, unless the charge be in fact true and actually capable of proof; and any person who makes any such charge shall have the burden of proof to show the truth thereof when called to account therefor under any affidavit or indictment against him or her for a violation of this section. Any language deliberately uttered or published which, when fairly and reasonably construed and as commonly understood, would clearly and unmistakably imply any such charge, shall be deemed and held to be the equivalent of a direct charge.

**HISTORY:**
Derived from 1972 Code § 23-3-33 [Codes, 1942, § 3174; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, § 333]; en, Laws, 1986, ch. 495, § 265; Laws, 2017, ch. 441, § 146, eff from and after July 1, 2017.

**Amendment Notes —**
The 2017 amendment deleted the last sentence of the former first paragraph, which read: "And in no event shall any such charge, whether true or untrue, be made on the day of any election, or within the last five (5) days immediately preceding the date of any election"; and deleted the former second paragraph, which read: "Any person who shall willfully and knowingly violate this section shall be guilty of a misdemeanor, and upon the affidavit of any two (2) credible citizens of this state, before any judicial officer having jurisdiction of misde-

meanors, said officer shall thereupon forthwith issue his warrant for the arrest of said alleged offender, and when arrested the officer shall forthwith examine into the matter, and if the proof of guilt be evident or the presumption great, the officer shall place the accused person under bond in the sum of Five Hundred Dollars ($500.00), with two (2) or more good sureties, conditioned that the person bound will appear at the next term of the court where the offense is cognizable, and in addition that the person bound will not further violate this section; and additional affidavits may be filed and additional bonds may be required for each and every subsequent offense. When and if under a prosecution under this section, the alleged offender is finally acquitted, the persons who made the original affidavit shall pay all costs of the proceedings."

**Cross References —**

Provision that § 23-15-897, which requires that certain campaign materials be submitted to and approved by a candidate or his representative, is inapplicable to specified items appearing in newspapers and other publications, provided such items are not printed in violation of §§ 23-15-875 and 23-15-877, see § 23-15-879.

Provision that a person violating requirements relative to submission of campaign materials to a candidate and approval and subscription of such materials by the candidate, inter alia, may be proceeded against as provided in this section, see § 23-15-897.

## RESEARCH REFERENCES

**ALR.**

Criticism or disparagement of character, competence, or conduct of candidate for office as defamation. 37 A.L.R.4th 1088.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 350, 359, 445-477.

15 Am. Jur. Trials 1, Unfair Election Campaign Practices.

**CJS.**

29 C.J.S., Elections §§ 575, 576, 578–583

**Lawyers' Edition.**

Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L. Ed. 2d 1960.

## § 23-15-877. Prohibitions against newspaper editorials and stories with respect to integrity of candidate; newspaper's obligation to print reply; liability for damages.

If during any election campaign in Mississippi any newspaper either domiciled in the state, or outside of the state circulating inside the State of Mississippi, shall print any editorial or news story reflecting upon the honesty or integrity or moral character of any candidate in such campaign or on the honesty and integrity or moral character of any candidate who was elected or defeated in such campaign, such newspaper shall, on the written or telegraphic request of such candidate or his agents, print in such newspaper not later than the second issue of such newspaper following the receipt of such request, a statement by the candidate or his duly accredited representative giving the candidate's reply. Such statement shall be printed in the exact language which the candidate or his representative presents and shall be printed as near as is practical on the same page, in the same position, and in the same size type and headlines as the original editorial or news story reflecting on the candidate had been printed.

This section shall be construed to include those news stories wherein the newspaper quotes from a candidate or individual statements attacking the honesty or integrity or moral character of a candidate or ex-candidate.

If such newspaper fails or refuses to publish such answer when requested, the owner of such newspaper shall be liable to a suit for damages by the candidate claiming to be injured by such publication. In event of a verdict in favor of the plaintiff, the measure of damages shall be the injury suffered or a penalty of Five Hundred Dollars ($500.00), whichever is the larger amount. In all cases, the truth of the charge may be offered as defense to the suit. But nothing herein contained shall be construed to abolish any existing legal rights of action in such cases.

**HISTORY:**

Derived from 1972 Code § 23-3-35 [Codes, 1942, § 3175; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, § 333]; en, Laws, 1986, ch. 495, § 266, eff from and after January 1, 1987.

**Cross References —**

Provision that § 23-15-897, which requires that certain campaign materials be submitted to and approved by a candidate or his representative, is inapplicable to specified items appearing in newspapers and other publications, provided such items are not printed in violation of §§ 23-15-875 and 23-15-877, see § 23-15-879.

## JUDICIAL DECISIONS

### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-3-35.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-3-35.**

This section [Code 1942, § 3175] does not require that the publisher of a newspaper make amends for an unjust criticism of a candidate for public office by printing the candidate's reply, except in cases where the editorial and news story reflects upon the honesty, or integrity or moral character of the candidate. Manasco v. Walley, 216 Miss. 614, 63 So. 2d 91, 1953 Miss. LEXIS 677 (Miss. 1953).

The word "moral" means righteous or upright. Manasco v. Walley, 216 Miss. 614, 63 So. 2d 91, 1953 Miss. LEXIS 677 (Miss. 1953).

The word "integrity" means moral soundness, freedom from corrupting influence or practice. Manasco v. Walley, 216 Miss. 614, 63 So. 2d 91, 1953 Miss. LEXIS 677 (Miss. 1953).

The word "honesty" means fairness and straight-forwardness of conduct, integrity, freedom from fraud. Manasco v. Walley, 216 Miss. 614, 63 So. 2d 91, 1953 Miss. LEXIS 677 (Miss. 1953).

The word "reflect" as used in this section [Code 1942, § 3175] means to cast aspersion or reproach. Manasco v. Walley, 216 Miss. 614, 63 So. 2d 91, 1953 Miss. LEXIS 677 (Miss. 1953).

In an action for damages for defamation based upon statute making newspaper liable if it refuses to publish candidate's answer to editorial or a news story reflecting upon his honesty, integrity or moral character, the meaning of the editorial must be ascertained from the language used, as commonly understood. Manasco v. Walley, 216 Miss. 614, 63 So. 2d 91, 1953 Miss. LEXIS 677 (Miss. 1953).

## RESEARCH REFERENCES

**ALR.**

Liability of radio or television company for failure to afford equal time to political candidates. 31 A.L.R.3d 1448.

Criticism or disparagement of character, competence, or conduct of candidate for office as defamation. 37 A.L.R.4th 1088.

Political candidate's right to equal broadcast time under 47 USCS § 315. 35 A.L.R. Fed. 856.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 350, 359, 445-477.

15 Am. Jur. Trials 1, Unfair Election Campaign Practices.

21 Am. Jur. Proof of Facts 513, Equal Broadcast Time for Political Candidates.

**CJS.**

29 C.J.S., Elections §§ 575, 576, 578–583

## § 23-15-879. Exemption of newspapers and other publications from requirements as to subscription of printed matter.

Section 23-15-897 shall not apply to editorials, original or copies, in any newspaper or other publication regularly published and issued to bona fide paid subscribers, and not published and issued solely or principally for political purposes, or to news matter prepared and written by the regularly employed staff of the paper, or to the printing in said paper of any letter together with the signature thereto, provided that any of the matter so printed and published is not prohibited by the provisions of Section 23-15-875 or 23-15-877, or by some other prohibition of law.

**HISTORY:**

Derived from 1972 Code § 23-3-39 [Codes, 1942, § 177; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, § 333]; en, Laws, 1986, ch. 495, § 267, eff from and after January 1, 1987.

### RESEARCH REFERENCES

**ALR.**

Validity and construction of state statute prohibiting anonymous political advertising. 4 A.L.R.4th 741.

Criticism or disparagement of character, competence, or conduct of candidate for office as defamation. 37 A.L.R.4th 1088.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 350, 359, 445-477.

15 Am. Jur. Trials 1, Unfair Election Campaign Practices.

**CJS.**

29 C.J.S., Elections §§ 575, 576, 578–583

## § 23-15-881. Prohibitions against excessive expenditures or hiring of workers for state highways or public roads; maintenance of records.

It shall be unlawful for the Mississippi Transportation Commission or any member of the Mississippi Transportation Commission, or the board of supervisors of any county or any member of the board of supervisors of such county, to employ, during the months of May, June, July and August of any year in which a general primary election is held for the nomination and election of members of the Mississippi Transportation Commission and members of the boards of supervisors, a greater number of persons to work and maintain the state highways, in any highway district, or the public roads, in any supervisors district of the county, as the case may be, than the average number of persons employed for similar purposes in such highway district or supervisors district, as the case may be, during the months of May, June, July and August of the three (3) years immediately preceding the year in which such general primary election is held. It shall be unlawful for the Mississippi Transportation Commission, or the board of supervisors of any county, to expend out of the state highway funds, or the road funds of the county or any supervisors district thereof, as the case may be, in the payment of wages or other compensation for labor performed in working and maintaining the highways of any highway district, or the public roads of any supervisors district of the county, as the case may be, during the months of May, June, July and August of such election year, a total amount in excess of the average total amount expended for such labor, in such highway district or supervisors district, as the case may be, during the corresponding four-month period of the three (3) years immediately preceding.

It shall be the duty of the Mississippi Transportation Commission and the board of supervisors of each county, respectively, to keep sufficient records of the numbers of employees and expenditures made for labor on the state highways of each highway district, and the public roads of each supervisors district, for the months of May, June, July and August of each year, to show the number of persons employed for such work in each highway district and each supervisors district, as the case may be, during said four-month period, and the total amount expended in the payment of salaries and other compensation to such employees, so that it may be ascertained, from an examination of such records, whether or not the provisions of this chapter have been violated.

**HISTORY:**

Derived from 1972 Code § 23-1-43 [Codes, 1942, § 3133-01; Laws, 1970, ch. 506, § 8; repealed by Laws, 1986, ch. 495, § 331]; en, Laws, 1986, ch. 495, § 268; Laws, 2017, ch. 441, § 147, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment substituted "Mississippi Transportation Commission" for "State Highway Commission" five times; substituted "four-month period" for "four (4) months' period" twice; and deleted the last paragraph, which read: "It is provided, however, because of the abnormal conditions existing in certain counties of the state due to recent floods in which roads and bridges have been materially damaged or washed away and destroyed, if the board of supervisors in any county passes a resolution as provided in Section 19-9-11, Mississippi Code of 1972, for the emergency issuance of road and bridge bonds, the provisions of this section shall not be applicable to or in force concerning the board of supervisors during the calendar year 1955."

**Cross References —**

Actions to which the prohibitions of this section are inapplicable, see § 23-15-883.

Applicability of the restrictions imposed by this section and § 23-15-883 to the governing authority of a municipality, see § 23-15-885.

## OPINIONS OF THE ATTORNEY GENERAL

With the sole exception of supervisors and contracts falling within the provisions of § 19-11-27, the prohibitions of §§ 19-11-27, 65-7-95 and 23-15-881 apply to supervisors who are unopposed in the primaries and general elections. 1999 Miss. Op. Att'y Gen. 220.

This section does not prohibit a board of supervisors from entering into an agreement for a loan under the local governments capital improvements revolving loan program provided by §§ 57-1-301 et seq. at any time during the last year of their terms of office. 1999 Miss. Op. Att'y Gen. 368.

## RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 350, 359, 445-477.

**CJS.**

29 C.J.S., Elections §§ 575, 576, 578–583

## § 23-15-883. Exceptions to prohibitions with respect to state highway or public road expenditures or employment.

The restriction imposed upon the Mississippi Transportation Commission and the boards of supervisors of the several counties in the employment of labor to work and maintain the state highways and the public roads of the several supervisors' districts of the county, as provided in Section 23-15-881, shall not apply to road contractors or bridge contractors engaged in the construction or maintenance of state highways or county roads under contracts awarded by the Mississippi Transportation Commission, or the board of supervisors, as the case may be, where such contracts shall have been awarded to the lowest responsible bidder, after legal advertisement, as provided by law; nor shall the restriction imposed in Section 23-15-881 apply to the labor employed by such road contractors or bridge contractors in carrying out such contracts. Nor shall the provisions of this chapter apply to the employment by the Mississippi Transportation Commission, or the board of supervisors, as the case may be, of extra labor employed to make repairs upon the state highways or highway bridges, or upon the county roads or bridges, in cases where such state highways or highway bridges, or such county roads or bridges, have been damaged or destroyed by severe storms, floods or other unforeseen disasters.

**HISTORY:**

Derived from 1942 Code § 3134 [Laws, 1940, ch. 156; repealed by Laws, 1970, ch. 506]; en, Laws, 1986, ch. 495, § 269; Laws, 2017, ch. 441, § 181, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment substituted "Mississippi Transportation Commission" for "State Highway Commission" three times.

**Cross References —**

Applicability of the restrictions imposed by this section and § 23-15-881 to the governing authority of a municipality, see § 23-15-885.

**RESEARCH REFERENCES**

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 350, 359, 445-477.

**CJS.**

29 C.J.S., Elections §§ 575, 576, 578–583

## § 23-15-885. Prohibitions against excessive expenditures or hiring of workers for streets of municipalities.

The restrictions imposed in Sections 23-15-881 and 23-15-883 shall likewise apply to the mayor and board of aldermen, or other governing authority, of each municipality, in the employment of labor for working and maintaining the streets of the municipality during the four-month period next preceding the date of holding the general primary election in such municipality for the election of municipal officers.

**HISTORY:**

Derived from 1942 Code § 3135 [Laws, 1940, ch 156; repealed by Laws, 1970, ch. 506]; en, Laws, 1986, ch. 495, § 270, eff from and after January 1, 1987.

**RESEARCH REFERENCES**

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 350, 359, 445-477.

**CJS.**

29 C.J.S., Elections §§ 575, 576, 578–583

## § 23-15-887. Penalties for violation of chapter by member of Mississippi Transportation Commission, member of board of supervisors, or mayor or member of board of aldermen or other governing authority of municipality.

If any member of the Mississippi Transportation Commission, and any member of the board of supervisors, or the mayor or any member of the board of aldermen or other governing authority of any municipality, shall violate the provisions of this article, he or she shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or by imprisonment in the county jail for a term not to exceed six (6) months, or by both such fine and imprisonment.

**HISTORY:**

Derived from 1942 Code § 3136 [Laws, 1940, ch 156; repealed by Laws, 1970, ch. 506]; en, Laws, 1986, ch. 495, § 271; Laws, 1987, ch. 499, § 8; Laws, 2017, ch. 441, § 182, eff from and after July 1, 2017.

**Editor's Notes —**

Laws of 1987, ch. 499, § 20, provides as follows:

"SECTION 20. If any section, paragraph, sentence, clause or phrase of this act is declared to be unconstitutional or void, or for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses or phrases shall be in no manner affected thereby but shall remain in full force and effect."

**Amendment Notes —**

The 2017 amendment substituted "Mississippi Transportation Commission" for "State Highway Commission"; and made a gender neutral change.

**Cross References —**

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 350, 359, 445-477.

**CJS.**

29 C.J.S., Elections §§ 575, 576, 578–583

**Lawyers' Edition.**

Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L. Ed. 2d 1960.

## § 23-15-889. Prohibitions against buying or selling vote or offering to do so; penalties.

It shall be unlawful for any person to sell or offer to sell his or her vote and it shall be likewise unlawful for any person to offer money or anything of substantial value to anyone for his vote. Anyone violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than Fifty Dollars ($50.00) nor more than Five Hundred Dollars ($500.00), or imprisoned not more than six (6) months, or both.

**HISTORY:**

Derived from 1942 Code § 3137 [Codes, 1906, § 3719; Hemingway's 1917, § 6411; 1930, § 5890; repealed by Laws, 1986, ch. 495, § 346]; en, Laws, 1986, ch. 495, § 272; Laws, 2017, ch. 441, § 183, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment made a gender neutral change in the first sentence.

**Cross References —**

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

## JUDICIAL DECISIONS

### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-1-51.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-1-51.**

Cash drawing sponsored by political candidate does not constitute violation of bribery statutes (§§ 23-1-51 [Repealed.], 97-13-1), candidate gift statute (§ 23-3-27 [Repealed.]), or lottery statute (§ 97-33-31) where scheme sponsored by candidate requires only that voters who wish to participate in cash drawing participate in election and where scheme expressly disclaims attempt to influence direction of vote. Naron v. Prestage, 469 So. 2d 83, 1985 Miss. LEXIS 2066 (Miss. 1985).

## OPINIONS OF THE ATTORNEY GENERAL

Since no one was being asked by a mayoral candidate to vote for her in exchange for a pie, cake or gift, there was nothing to prohibit her from continuing to bake pies and cakes for friends, seniors, the sick and children's birthdays while running for office. 2005 Miss. Op. Att'y Gen. 69.

## RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 350, 359, 445-477.

**CJS.**

29 C.J.S., Elections §§ 575, 576, 578–583

**Lawyers' Edition.**

Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L. Ed. 2d 1960.

## § 23-15-891. Prohibition against provision of free services or services at reduced rates by common carriers, Internet service providers, or telephone companies; requirement of sworn statement.

No common carrier, Internet service provider or telephone company shall give to any candidate, or to any member of any political committee, or to any person to be used to aid or promote the success or defeat of any candidate for election for any public office, free transportation or Internet service or telephone service, as the case may be, or any reduction thereof that is not made alike to all other persons. All persons required by the provisions of this chapter to make and file statements shall make oath that they have not received or made use of, directly or indirectly, in connection with any candidacy for nomination to any public office, free transportation or Internet or telephone service.

**HISTORY:**

Derived from 1942 Code § 3138 [Codes, 1906, § 3727; Hemingway's 1917, § 6421; 1930, § 5891; repealed by Laws, 1970, ch. 506]; en, Laws, 1986, ch. 495, § 273; Laws, 2017, ch. 441, § 148, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment, in the first sentence, substituted "Internet service provider" for "telegraph company" and "Internet service" for "telegraph"; and substituted "Internet" for "telegraph" in the last sentence.

## RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 350, 359, 445-477.

**CJS.**

29 C.J.S., Elections §§ 575, 576, 578–583

## § 23-15-893. Repealed.

Repealed by Laws of 2017, ch. 441, § 202, effective July 1, 2017.

§ 23-15-893. [Derived from 1942 Code § 3132 [Codes, 1906, § 3720; Hemingway's 1917, § 6412; 1930, § 5889; repealed by Laws, 1970, ch 506]; en, Laws, 1986, ch. 495, § 274; Laws, 1989, ch. 384, § 1, eff from and after April 14, 1989 (the date the United States Attorney General interposed no objection to the amendment).]

**Editor's Notes —**

Former § 23-15-893 provided the penalty for being intoxicated in or about a polling place during an election.

## § 23-15-895. Prohibition against distribution of campaign material within 150 feet of polling place; prohibition against appearance of certain persons at polling place while armed, uniformed, or displaying badge or credentials; enforcement.

No candidate for an elective office, or any representative of such candidate, and no proponent or opponent of any constitutional amendment, local issue or other measure printed on the ballot may post or distribute cards, posters or other campaign literature within one hundred fifty (150) feet of any entrance of the building wherein any election is being held. No candidate or a representative named by him or her in writing may appear at any polling place while armed or uniformed, or display any badge or credentials except as may be issued by the manager of the polling place. As used in this section, the term "local issue" shall have the meaning ascribed to such term in Section 23-15-375. This section shall be enforced by election officials and law enforcement officials.

**HISTORY:**

Derived from 1972 Code § 23-3-17 [Codes, 1942, § 3166; Laws, 1935, ch. 19; Laws, 1979, ch. 487 § 4; repealed by Laws, 1986, ch. 495, § 333]; en, Laws, 1986, ch. 495, § 275; Laws, 2017, ch. 441, § 149, eff from and after July 1, 2017.

**Editor's Notes —**

The United States Attorney General, by letter dated June 23, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 494, § 1.

**Amendment Notes —**

The 2017 amendment substituted "No candidate" for "It shall be unlawful for any candidate" at the beginning of the first and second sentences; in the first sentence, substituted "and no proponent" for "or for any proponent" and "ballot may post" for "ballot to post"; in the second sentence, substituted "may appear" for "to appear," and "or display" for "nor shall he display"; added the last sentence; and made a gender neutral change.

**Cross References —**

Consequences of noncompliance with this section, which renders it impossible to arrive at the will of the voters at a precinct, see § 23-15-593.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Construction with other Sections.
3. Relation to federal law.
4. Illustrative cases.

**1. In general.**

Violations of the 150-foot rule of § 23-15-895, which prohibits any candidate or any candidate's representative from posting or distributing campaign literature within 150 feet of any building where an election is being held, will not necessarily require throwing out a precinct box. Where the violations involve "failures in material particulars . . . to such an extent that it is impossible to arrive at the will of the voters at such precinct," the entire box may be thrown out; however, if it appears "with reasonable certainty" that the violations were not condoned by any of the election precinct managers for the purpose of electing or defeating a certain candidate, then a hearing should be held and the commission or executive committee should make such determination as is just. The statute does not rule out an order, either by the election body or the court in review, to hold another election at that precinct with new managers. Rizzo v. Bizzell, 530 So. 2d 121, 1988 Miss. LEXIS 325 (Miss. 1988).

**2. Construction with other Sections.**

Trial court was correct in overruling the decision of the Jefferson Davis County Democratic Executive Committee, to conduct a new election for the Democratic nominee for Jefferson Davis County Chancery Clerk. The requirements to hold a new election under Miss. Code Ann. § 23-15-593 were not met, as § 23-15-593 authorized new elections for individual precincts if the requirements were met, not a new election county or district wide. To have held a new election county wide, the Committee would had to have determined that all precincts failed in material particulars to comply with the requirements of Miss. Code Ann. §§ 23-15-591 and 23-15-895 to such an extent that it was impossible to arrive at the will of the voters; there was no evidence that there were violations of Miss. Code Ann. §§ 23-15-591 and 23-15-895 and the committee exceeded its authority under Miss. Code Ann. § 23-15-593 in ordering a new election. Jefferson Davis County v. Davies, 912 So. 2d 837, 2005 Miss. LEXIS 212 (Miss. 2005).

**3. Relation to federal law.**

Black chairman of a county political party executive committee was guilty of racial discrimination under § 2 of the Voting Rights Act because, inter alia, he enforced the poll place anti-campaigning rules in Miss. Code Ann. § 23-15-895 in a way that treated white candidates disparately from black candidates for the purpose of diluting the white vote. United States v. Brown, 494 F. Supp. 2d 440, 2007 U.S. Dist. LEXIS 47255 (S.D. Miss. 2007), aff'd, 561 F.3d 420, 2009 U.S. App. LEXIS 4030 (5th Cir. Miss. 2009).

**4. Illustrative cases.**

Primary election candidate's blanket allegation implying that the incumbent sheriff illegally directed his deputies to transport prisoners to the polls never materialized into an actual claim of injustice since he never presented the claim with particularity or supported it with credible evidence. Harpole v. Kemper County Democratic Exec. Comm., 908 So. 2d 129, 2005 Miss. LEXIS 463 (Miss. 2005).

## OPINIONS OF THE ATTORNEY GENERAL

To the extent that campaigning involves the posting or distribution of campaign literature inside the courthouse (or other building wherein the registrar's office is located) and within 150 feet of any entrance thereto during the 45 day absentee balloting period, it is prohibited. 2003 Miss. Op. Att'y Gen. 336.

RESEARCH REFERENCES

**Am. Jur.**
26 Am. Jur. 2d, Elections §§ 350, 359, 445-477.

**CJS.**
29 C.J.S., Elections §§ 575, 576, 578–583

**Law Reviews.**
Mississippi Election Code of 1986, 56 Miss LJ 535, December 1986.

### § 23-15-897. Certain information to be included in campaign materials; compliance with section for campaign materials published on electronic platform.

(1) The following words and phrases shall have the meanings as defined in this section unless the context clearly indicates otherwise:

(a) "Campaign materials" include any materials designed to influence voters for or against any candidate, party or measure to be voted on at any election, or containing information about any candidate, party or measure paid for by a candidate, political committee, or independent expenditure which requires disclosure under campaign finance laws.

(b) "Publish" means the act or instance of making campaign material available to the public, or to a list of subscribers, by mail, telephone, electronic communications platforms, Internet, software applications, printed materials or any other means of distribution.

(c) "Printed material" shall include, but not be limited to, any notice, placard, bill, poster, dodger, pamphlet, advertisement, sign or any other form of printed publication, except notices, posters and the like, which simply announce a speaking date and invite attendance thereon.

(2) No candidate, political committee or other person shall publish, or knowingly cause to be published, any campaign materials unless it contains the following information:

(a) The name of the candidate along with a statement that the message is approved by the candidate; or

(b) If the message has not been approved by a specific candidate, the name of the person, political committee or organization paying for the publication of the message; or

(c) If the message has not been approved by the candidate and no person, political committee or organization is identified as having paid for the publication, the entity producing the campaign materials must be identified.

(3) Publication of campaign materials through an electronic platform shall be deemed to comply with the requirements of this section if the home page of the candidate or political committee provides the information required by subsection (2), and each electronic publication provides a link to that home page.

**HISTORY:**
Derived from 1972 Code § 23-3-37 [Codes, 1942, §§ 3176, 3178; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, § 333]; en, Laws, 1986, ch. 495, § 276; Laws, 2017, ch. 441, § 150, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment rewrote the section, which read: "No person shall write, print, post or distribute or cause to be distributed, a notice, placard, bill, poster, dodger, pamphlet, advertisement or any other form of publication (except notices, posters, and the like, which simply announce speaking date and invite attendance thereon) which is designed to influence voters for or against any candidate at any election, unless and until the same shall have been submitted to, and approved and subscribed by the candidate or by his campaign manager or assistant manager, which subscription shall in all cases be printed as so subscribed, and not otherwise. As, for instance, it shall be unlawful to write, print, post, distribute or cause to be written, printed, posted or distributed any such matter when the authority therefor is designated simply as 'paid political advertisement,' or 'contributed by a friend,' or 'contributed by the friends and supporters,' and the like. Nor shall any radio or television station allow any time or place on any of its programs for any address for or against any candidate at any election, except in accordance with the provisions of the federal statutes and the rules and regulations of the Federal Communications Commission as applied to the use of radio and television facilities by a candidate or candidates for office. But the aforesaid written or printed matter and the time for radio and television addresses shall be paid for at the usual and ordinary rates, and only by a person authorized to make expenditures in behalf of the candidate, as is provided in this chapter in regard to other expenditures.

"For a violation or violations of this section, the offender may be proceeded against as provided in Section 23-15-875."

**Cross References —**

Provision that this section is inapplicable to specified items appearing in newspapers and other publications, provided such items are not printed in violation of §§ 23-15-875 and 23-15-877, see § 23-15-879.

## RESEARCH REFERENCES

**ALR.**

Liability of radio or television company for failure to afford equal time to political candidates. 31 A.L.R.3d 1448.

Validity and construction of state statute prohibiting anonymous political advertising. 4 A.L.R.4th 741.

Political candidate's right to equal broadcast time under 47 USCS § 315. 35 A.L.R. Fed. 856.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 350, 359, 445-477.

21 Am. Jur. Proof of Facts 513, Equal Broadcast Time for Political Candidates.

**CJS.**

29 C.J.S., Elections §§ 575, 576, 578–583

**Lawyers' Edition.**

Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L. Ed. 2d 1960.

## § 23-15-899. Repealed.

Repealed by Laws of 2017, ch. 441, § 203, effective July 1, 2017.

§ 23-15-899. [Derived from 1942 Code § 3141 [Codes, 1906, § 3728; Hemingway's 1917, § 6422; 1930, § 5894; repealed by Laws, 1970, ch. 506]; en, Laws, 1986, ch. 495, § 277; Laws, 1987, ch. 499, § 9, eff from and after July 24, 1987 (the date on which the United States Attorney General interposed no objection to the amendment).]

**Editor's Notes —**

Former § 23-15-899 provided for identifying information to be posted on campaign materials. For present provisions relating to publication of campaign materials, see § 23-15-897.

## § 23-15-901. Electors' privilege from arrest.

Electors shall in all cases other than those of treason, felony or breach of the peace be privileged from arrest during their attendance on elections and going to and returning from the same.

**HISTORY:**

Derived from 1972 Code § 23-5-165 [Codes, 1857, ch. 4, art 18; 1871, § 368; 1880, § 144; 1892, § 3675; 1906, § 4182; Hemingway's 1917, § 6816; 1930, § 6248; 1942, § 3277; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 278, eff from and after January 1, 1987.

### RESEARCH REFERENCES

**Am. Jur.**

25 Am. Jur. 2d, Elections §§ 22, 57, 97-102, 103-110, 112, 119, 120, 124, 126-129, 135-147, 159-161, 183-185.

**CJS.**

29 C.J.S., Elections §§ 9-25, 27, 28, 47-50, 53.

## § 23-15-903. Procedure for filing complaint of violation of election law.

In addition to any other procedure provided by law, any person who has reason to believe that any election law has been violated may file a written complaint with the election commissioners of the county in which the alleged violation occurred. If the election commissioners determine the allegations in the complaint, if true, would be a violation of this chapter or Section 97-13-1, et seq., the election commissioners shall refer the complaint to the district attorney for prosecution.

**HISTORY:**

Laws, 1993, ch. 528, § 2; Laws, 2017, ch. 441, § 151, eff from and after July 1, 2017.

**Editor's Notes —**

The United States Attorney General, by letter dated August 16, 1993, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to certain changes occasioned by Laws of 1993, ch. 528. However, with respect to procedures for processing complaints alleging election law violations, the Attorney General concluded that the information submitted was insufficient to support a determination that the proposed change did not have the purpose and would not have the effect of denying or abridging the right to vote on account of race or color, as required by Section 5, and requested additional information.

Laws of 1993, ch. 528, § 19, provides as follows:

"SECTION 19. If any section, paragraph, sentence, clause, phrase or any part of this act is declared to be unconstitutional or void, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect."

**Amendment Notes —**

The 2017 amendment rewrote the section, which read: "In addition to any other procedure provided by law, any person who has reason to believe that any election law has been violated may file a written complaint with the commissioners of election of the county in which the alleged violation occurred. The commissioners of election shall conduct a hearing on any such complaint. The district attorney shall have notice of such hearing and the district attorney or his legal assistant may attend such hearing. If the election commissioners find that there is probable cause to believe that a violation has occurred, they shall refer the complaint to the district attorney and the district attorney shall present the matter to the grand jury at its next term."

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d Elections §§ 445-477.

**CJS.**

29 C.J.S., Elections §§ 543–560.

### § 23-15-905. Qualifying as candidate for more than one office prohibited under certain circumstances.

(1) No person may qualify as a candidate for more than one (1) office if the election for those offices occurs on the same day. If a person takes the steps necessary to qualify for more than one (1) office, the appropriate executive committee or election commissioner shall determine the last office for which the person qualified and the person shall be considered to be qualified as a candidate for that office only and the person shall be notified of this determination. The provisions of this subsection shall not apply to elections for municipal office.

(2) No person may qualify as a candidate for more than one (1) municipal office if the election for those offices occurs on the same day. If a person takes the steps necessary to qualify for more than one (1) office, the appropriate executive committee or election commissioner shall determine the last office for which the person qualified and the person shall be considered to be qualified as a candidate for that office only and the person shall be notified of this determination.

**HISTORY:**

Laws, 2007, ch. 604, § 1; Laws, 2017, ch. 441, § 152, eff from and after July 1, 2017.

**Editor's Notes —**

By letter dated September 10, 2007, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2007, ch. 604.

**Amendment Notes —**

The 2017 amendment deleted "From and after July 1, 2008" from the beginning of the first sentence of (1) and (2), and made related changes.

## ARTICLE 29.

## ELECTION CONTESTS.

Subarticle A. General Provisions. .......... 23-15-911
Subarticle B. Contests of Primary Elections. .......... 23-15-921
Subarticle C. Contests of Other Elections. .......... 23-15-951
Subarticle D. Contests of Qualifications of Candidates. .......... 23-15-961

## SUBARTICLE A.

## GENERAL PROVISIONS.

Sec.
23-15-911. Control of ballot boxes and their contents after general or primary elections; examinations by candidates or their representatives.
23-15-913. Judges to be available to hear and resolve election day disputes.

### § 23-15-911. Control of ballot boxes and their contents after general or primary elections; examinations by candidates or their representatives.

(1)(a) When the returns for a box and the contents of the ballot box and the conduct of the election have been canvassed and reviewed by the county election commission in the case of general elections or the county executive committee in the case of primary elections, all the contents of the box required to be placed and sealed in the ballot box by the poll managers shall be replaced therein by the election commission or executive committee, as the case may be, and the box shall be forthwith resealed and delivered to the circuit clerk, who shall safely keep and secure the same against any tampering. At any time within twelve (12) days after the canvass and examination of the box and its contents by the election commission or executive committee, as the case may be, any candidate or his or her representative authorized in writing by him or her shall have the right of full examination of the box and its contents upon three (3) days' notice of his or her application therefor served upon the opposing candidates. The service of notice shall be provided to each opposing candidate by delivering a copy personally to each candidate, or by performing two (2) of the following:

(i) By leaving a copy at each candidate's usual place of residence with a family member, who shall be no less than sixteen (16) years of age and, who resides in the candidate's residence;

(ii) By email or other electronic means, with receipt deemed upon transmission; or

(iii) By mailing a copy of the notice by registered or certified mail that is addressed to each opposing candidate at that candidate's residence with receipt deemed mailing.

(b) If service of notice cannot be made to any opposing candidate, then notice may be posted on the door of each candidate's usual place of abode. If any candidate's usual place of residence is a multi-family dwelling, a copy of the notice must be mailed to the candidate or candidates by United States first-class mail, postage prepaid, return receipt requested. Proof of service of notice upon any opposing candidate shall be made to the circuit clerk within three (3) days before a full examination of the ballot box may be conducted.

(c) The examination shall be conducted in the presence of the circuit clerk or his or her deputy who shall be charged with the duty to see that none of the contents of the box are removed from the presence of the clerk or in any way tampered with. Upon the completion of the examination the box shall be resealed with all its original contents inside. And if any contest or complaint before the court shall arise over the box, it shall be kept intact and sealed until the court hearing and another ballot box, if necessary, shall be furnished for the precinct involved.

(2) The provisions of this section allowing the examination of ballot boxes shall apply in the case of an election contest regarding the seat of a member of the state Legislature. In such a case, the results of the examination shall be reported by the applicable circuit clerk to the Clerk of the House of Representatives or the Secretary of the Senate, as the case may be.

**HISTORY:**

Derived from 1972 Code § 23-3-23 [Codes, 1942, § 3169; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, § 333]; en, Laws, 1986, ch.

495, § 279; Laws, 1987, ch. 499, § 10; Laws, 2000, ch. 450, § 4; Laws, 2017, ch. 441, § 153, eff from and after July 1, 2017.

**Editor's Notes —**

Laws of 1987, ch. 499, § 20, provides as follows:

"SECTION 20. If any section, paragraph, sentence, clause or phrase of this act is declared to be unconstitutional or void, or for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses or phrases shall be in no manner affected thereby but shall remain in full force and effect."

On August 7, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 450.

**Amendment Notes —**

The 2017 amendment rewrote (1), which read: "When the returns for a box and the contents of the ballot box and the conduct of the election thereat have been canvassed and reviewed by the county election commission in the case of general elections or the county executive committee in the case of primary elections, all the contents of the box required to be placed and sealed in the ballot box by the managers shall be replaced therein by the election commission or executive committee, as the case may be, and the box shall be forthwith resealed and delivered to the circuit clerk, who shall safely keep and secure the same against any tampering therewith. At any time within twelve (12) days after the canvass and examination of the box and its contents by the election commission or executive committee, as the case may be, any candidate or his representative authorized in writing by him shall have the right of full examination of said box and its contents upon three (3) days' notice of his application therefor served upon the opposing candidate or candidates, or upon any member of their family over the age of eighteen (18) years, which examination shall be conducted in the presence of the circuit clerk or his deputy who shall be charged with the duty to see that none of the contents of the box are removed from the presence of the clerk or in any way tampered with. Upon the completion of said examination the box shall be resealed with all its contents as theretofore. And if any contest or complaint before the court shall arise over said box, it shall be kept intact and sealed until the court hearing and another ballot box, if necessary, shall be furnished for the precinct involved."

## JUDICIAL DECISIONS

### ANALYSIS

1. Compliance with statute.
2. —Enforcement of right to examine ballot boxes.
3. Special election warranted.
4.-5. [Reserved for future use.]
6. Under former Section 23-3-23, generally.
7. —Evidence.
8. —Appeals.

**1. Compliance with statute.**

Circuit court properly granted summary judgment to a winning candidate and the political party's executive committee in a losing candidate's action for a new primary election based on ballot box security issues because, while the losing candidate made largely uncontradicted allegations of lapses in ballot-box security, he made no allegations of illegal voting and no specific allegations of fraudulent election activity. Wesley v. Wash. Cty. Democratic Exec. Comm., 235 So. 3d 1379, 2017 Miss. LEXIS 444 (Miss. 2017).

Candidate contesting the election complied with Miss. Code Ann. § 23-15-911 by provision of the candidate's handwritten petition on May 4, 2005, to the city clerk, who in turn notified each of the candidates of the candidate's right to examine the boxes; the notice was signed by each of the four candidates five days before the candidate inspected the ballot boxes. Moore v. Parker, 962 So. 2d 558, 2007 Miss. LEXIS 476 (Miss. 2007).

**2. —Enforcement of right to examine ballot boxes.**

No right was created to copy or scan materials from a ballot box during a statutory examination in an election contest. Smith v. Webster, 233 So. 3d 242, 2017 Miss. LEXIS 207 (Miss. 2017).

Losing candidate's petition for judicial review of a primary judicial election was dismissed for failure to state a cause of action because the losing candidate failed to request and view the ballots within the 12-day time frame mandated by Miss. Code Ann. § 23-15-911. Cook v. Brown, 909 So. 2d 1075, 2005 Miss. LEXIS 78 (Miss. 2005).

Candidate is entitled to enforce right of examination of ballot boxes conferred by Corrupt Practices Act by mandamus to be heard and determined in vacation, since such right is one affecting public interest and not merely personal to the candidate seeking to exercise it. Sartin v. Barlow, 196 Miss. 159, 16 So. 2d 372, 1944 Miss. LEXIS 175 (Miss. 1944).

**3. Special election warranted.**

Failure to secure ballot boxes under Miss. Code Ann. § 23-15-911 and the lack of control over the boxes were substantial irregularities that warranted a special election because they were radical departures from Mississippi election law. Waters v. Gnemi, 907 So. 2d 307, 2005 Miss. LEXIS 321 (Miss. 2005).

**4.-5. [Reserved for future use.]**

**6. Under former Section 23-3-23, generally.**

Under § 23-3-23 [Repealed.], the 12 day period within which a candidate wishing to contest an election must examine the ballots begins to run when the party's executive committee has certified the returns and declared an official winner. Noxubee County Democratic Executive Committee v. Russell, 443 So. 2d 1191, 1983 Miss. LEXIS 3064 (Miss. 1983).

This section [Code 1942, § 3169] does not make it mandatory that one who contests an election must examine the ballot boxes. Francis v. Sisk, 205 So. 2d 254, 1967 Miss. LEXIS 1229 (Miss. 1967).

There is no provision in this section [Code 1942, § 3169], or any other section, which prohibits a candidate who is contesting a canvass of a primary election from disclosing to other candidates the results of his examination of the ballot boxes. Francis v. Sisk, 205 So. 2d 254, 1967 Miss. LEXIS 1229 (Miss. 1967).

The time limit fixed by this provision may not be altered by the courts. Weeks v. Bates, 237 Miss. 778, 115 So. 2d 298, 1959 Miss. LEXIS 396 (Miss. 1959).

Objections based upon an examination of the ballot boxes after twelve days may not be considered, although made upon notice served within the twelve days. Weeks v. Bates, 237 Miss. 778, 115 So. 2d 298, 1959 Miss. LEXIS 396 (Miss. 1959).

This section [Code 1942, § 3169] is in pari materia with statute giving candidate a right to contest the election, and it is indicative of general policy of the state on a cognate subject matter to allow contesting candidates the right to obtain the facts concerning election precedent to filing a contest. Lopez v. Holleman, 219 Miss. 822, 69 So. 2d 903, 1954 Miss. LEXIS 392 (Miss. 1954).

Offer of a recount of ballots by chairman of county democratic executive committee, on morning after election, did not bar candidate's right of examination conferred by this section. Sartin v. Barlow, 196 Miss. 159, 16 So. 2d 372, 1944 Miss. LEXIS 175 (Miss. 1944).

Chairman of county executive committee has nothing to do with the manner of examination of ballot boxes under this section [Code 1942, § 3169]. Sartin v. Barlow, 196 Miss. 159, 16 So. 2d 372, 1944 Miss. LEXIS 175 (Miss. 1944).

**7. —Evidence.**

Evidence that after counting of ballots, and before recount thereof, circuit clerk failed to seal the ballot boxes in question and to keep a record of the seals as required by statute, and that such boxes and their contents were tampered with, warranted affirmance of order of special tribunal, unanimously entered, adjudging election valid as against contestant who received a majority on recount. Allen v. Funchess, 195 Miss. 486, 15 So. 2d 343, 1943 Miss. LEXIS 143 (Miss. 1943).

**8. —Appeals.**

Allowance of appeal with supersedeas from writ of mandamus ordering circuit clerk to permit candidate to examine ballot boxes after primary election as provided by the Corrupt Practices Act was an abuse of discretion, where such allowance had the practice or effect of denying the writ so far as affording any relief before the day of the general election, and it appeared on review that the appeal was without merit and instituted for the purpose of delay. Sartin v. Barlow, 196 Miss. 159, 16 So. 2d 372, 1944 Miss. LEXIS 175 (Miss. 1944).

Notwithstanding that general election had passed when record on appeal from writ of mandamus directing circuit clerk to permit primary candidate to inspect ballot boxes was filed in the Supreme Court, appeal would not be dismissed as involving a moot case in view of public interest involved, and compelling propriety to declare the rule of law to be followed under the Corrupt Practices Act. Sartin v. Barlow, 196 Miss. 159, 16 So. 2d 372, 1944 Miss. LEXIS 175 (Miss. 1944).

**Cited in:** Jefferson Davis County v. Davies, 912 So. 2d 837, 2005 Miss. LEXIS 212 (Miss. 2005).

## OPINIONS OF THE ATTORNEY GENERAL

No statute specifically makes it a crime to fail to comply with the statute in general, although willful violations of law are provided for in Section 97-13-19. 2000 Miss. Op. Att'y Gen. 703.

This section contemplates that once the examination by a candidate begins it is to be a continuous one from day to day until completion. It is our opinion that once the examination is completed and the boxes resealed a second examination by that candidate is not contemplated or authorized. 2003 Miss. Op. Att'y Gen. 517.

Where a letter of complaint apparently seeking an examination of ballot boxes was received by the circuit clerk more than 12 days after certification of the election results by the county election commission, and there was no indication that the other candidates were given the required notice, no examination could be conducted. 2003 Miss. Op. Att'y Gen. 661.

### RESEARCH REFERENCES

**ALR.**

Power to enjoin canvassing of votes and declaring result of election. 1 A.L.R.2d 588.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 381, 382, 384, 385 et seq.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 101-115 (election contests).

**CJS.**

29 C.J.S., Elections §§ 403 et seq.

## § 23-15-913. Judges to be available to hear and resolve election day disputes.

The judges listed and selected to hear election disputes, as provided in Section 23-15-951, shall be available on election day to immediately hear and resolve any election day disputes. The rules for filing pleadings shall be relaxed to carry out the purposes of this section. The judges selected shall perform no other judicial duties on election day. The Supreme Court shall make judges available to hear disputes in the county in which the disputes occur but no judge shall hear disputes in the district or county in which he or she was elected nor shall any judge hear any dispute in which any potential conflict may arise. Each judge shall be fair and impartial and shall be assigned on that basis.

**HISTORY:**

Laws, 1999, ch. 301, § 15; Laws, 2012, ch. 473, § 1; Laws, 2017, ch. 441, § 154, eff from and after July 1, 2017.

**Editor's Notes —**

Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 301, § 15.

By letter dated September 6, 2012, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Chapter 473, Laws of 2012.

**Amendment Notes —**

The 2017 amendment, in the first sentence, inserted "listed and" and "as provided in Section 23-15-951"; and in the next-to-last sentence, deleted "subdistrict" following "district" and made a gender neutral change.

# SUBARTICLE B.

# CONTESTS OF PRIMARY ELECTIONS.

Sec.

23-15-921. Nominations to county or county district offices, etc.; petition, notice of contest, investigation, and determination.
23-15-923. Nominations with respect to state, congressional, and judicial districts, etc.; investigation, findings, and declaration of nominee.
23-15-925. Power of committee to subpoena and to attach witnesses.
23-15-927. Filing of protest and petition in circuit court in event of unreasonable delay by committee; requirement of certificate and cost bond; suspension of committee's order.
23-15-929. Designation of circuit judge or retired judge on senior status to determine contest; notice; answer and cross-complaint.
23-15-931. Issuance of subpoenas and summonses by circuit clerk prior to hearing; assistance by, and findings of, election commissioners; entry of judgment by trial judge.
23-15-933. Appeal from judgment; restrictions upon review of findings of fact.
23-15-935. Attendance or absence of election commissioners at hearing.
23-15-937. Transfer of hearing; requirement of prompt adjudication; circumstances requiring special election.
23-15-939. Payment of traveling expenses of judge or chancellor; compensation of election commissioners.
23-15-941. Willful violation of election statute constituting criminal offense; issuance of arrest warrant; delivery of papers to grand jury foreman.

## § 23-15-921. Nominations to county or county district offices, etc.; petition, notice of contest, investigation, and determination.

Except as otherwise provided by Section 23-15-961, a person desiring to contest the election of another person returned as the nominee of the party to any county or county district office, or as the nominee of a legislative district composed of one (1) county or less, may, within twenty (20) days after the primary election, file a petition with the secretary, or any member of the county executive committee in the county in which the election was held, setting forth the grounds upon which the primary election is contested; and it shall be the duty of the executive committee to assemble by call of the chairman or three (3) members of said committee, notice of which contest shall be served five (5) days before said meeting, and after notifying all parties concerned proceed to investigate the grounds upon which the election is contested and, by majority vote of members present, declare the true results of such primary.

**HISTORY:**

Derived from 1972 Code § 3143 [Codes, Hemingway's 1917, § 6425; 1930, § 5896; Laws, 1908, ch. 136; repealed by Laws, 1986, ch. 495, § 346]; en, Laws, 1986, ch. 495, § 280; Laws, 1988, ch. 577, § 3, eff from and after December 9, 1988 (the date the United States Attorney General interposed no objection to the amendment).

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Service of notice of contest.
3. Hearing procedures.
4. Petition to contest, timing.

**1. In general.**

While the candidate did not file the candidate's earlier petition contesting the election with a member of the Houston Democratic Executive Committee pursuant to Miss. Code Ann. § 23-15-921, the candidate did later file a petition with the committee; the statute does not prohibit submission of an additional petition, and thus the winner's argument concerning the specificity of the earlier petition was irrelevant since the candidate submitted a more specific petition seven days later, the specificity of which the winner did not challenge. Moore v. Parker, 962 So. 2d 558, 2007 Miss. LEXIS 476 (Miss. 2007).

Nothing in the statute limits the committee's inquiry regarding the contesting of a primary election to allegations of fraud. Upton v. McKenzie, 761 So. 2d 167, 2000 Miss. LEXIS 136 (Miss. 2000).

When a political party Executive Committee meets to hear charges of irregularity concerning primary election contests, it sits as a quasi judicial body whose specific responsibility is to ensure the public of honest elections. The Chairman of the Committee is analogous to a judge and, in regards to recusal, an objective test is followed whereby "a judge is required to disqualify himself if a reasonable person, knowing all the circumstances, would harbor doubts about his impartiality." Pearson v. Parsons, 541 So. 2d 447, 1989 Miss. LEXIS 143 (Miss. 1989).

**2. Service of notice of contest.**

Where a political party's executive committee set a hearing for September 22, and served the contestant with notice of the hearing on Monday, September 15, since the time for service under Miss. Code Ann. § 23-15-921 – five days – was less than seven days, pursuant to Miss. Code Ann. § 1-3-67, the intermediate Saturdays and Sundays were excluded, and the candidate was timely served. Harpole v. Kemper County Democratic Exec. Comm., 908 So. 2d 129, 2005 Miss. LEXIS 463 (Miss. 2005).

**3. Hearing procedures.**

Dismissal of an election contest by a political candidate for a statewide office was appropriate because the candidate failed to file the election contest within the twenty-day deadline under Miss. Code Ann. § 23-15-921. McDaniel v. Cochran, 158 So. 3d 992, 2014 Miss. LEXIS 535 (Miss. 2014).

Circuit court properly set aside the results of a primary election because the nominee was disqualified where she did not maintain a residence in the ward. Glenn v. Powell, 149 So. 3d 480, 2014 Miss. LEXIS 516 (Miss. 2014).

That a political party's executive committee designated only seven of its committee members to serve on a panel to investigate a candidate's charge of election irregularities did not violate Miss. Code Ann. § 23-15-921, as the designation of a smaller panel satisfied both the "fast-track" requirement existing in election contests, and the committee gave full, complete, and serious consideration to the candidate's allegations. Harpole v. Kemper County Democratic Exec. Comm., 908 So. 2d 129, 2005 Miss. LEXIS 463 (Miss. 2005).

**4. Petition to contest, timing.**

Statute requiring a contest of a primary election to be filed within 20 days is not a statute of limitations, but is a condition precedent to the right to file a contest, and therefore, a failure to file a contest within 20 days does not have to be pleaded in any particular way by the contestee, and the matter may not be waived; hence action of contestee in moving to dismiss on ground the contest was not filed within 20 days after the primary election rather than in setting up such matter by special plea was not improper. Kellum v. Johnson, 237 Miss. 580, 115 So. 2d 147, 1959 Miss. LEXIS 395, 1959 Miss. LEXIS 507 (Miss. 1959).

Where a candidate for office of District Attorney, in a primary election, did not file his contest of the election results within 20 days from the date of the primary, his right to file such a contest was barred. Kellum v. Johnson, 237 Miss. 580, 115 So. 2d 147, 1959 Miss. LEXIS 395, 1959 Miss. LEXIS 507 (Miss. 1959).

## OPINIONS OF THE ATTORNEY GENERAL

A party executive committee is under an obligation to dispose of an election contest sufficiently in advance of the general election as will allow the orderly preparation of the ballot and conduct of said election by the county election commission. 1991 Miss. Op. Att'y Gen. 886.

If the executive committee delays disposing of the contest and the election commission proceeds to have the ballots for the general election printed with the certified nominee's name included thereon and, in this case, conducts the general election and certifies the nominee in question as the winner, the committee, loses its jurisdiction over the matter and any findings by the committee thereafter would be of no effect. 1991 Miss. Op. Att'y Gen. 886.

Absent an election contest, this section provides no authority to conduct an investigation with regard to an election result. 2003 Miss. Op. Att'y Gen. 471.

### RESEARCH REFERENCES

**Am. Jur.**
26 Am. Jur. 2d, Elections §§ 381, 382, 384, 385 et seq.

**CJS.**
29 C.J.S., Elections §§ 403 et seq.

## § 23-15-923. Nominations with respect to state, congressional, and judicial districts, etc.; investigation, findings, and declaration of nominee.

Except as otherwise provided in Section 23-15-961, a person desiring to contest the election of another returned as the nominee in state, congressional and judicial districts, and in legislative districts composed of more than one (1) county or parts of more than one (1) county, upon complaint filed with the Chairman of the State Executive Committee, by petition, reciting the grounds upon which the election is contested. If necessary and with the advice of four (4) members of said committee, the chairman shall issue his fiat to the chairman of the appropriate county executive committee, and in like manner as in the county office, the county committee shall investigate the complaint and return their findings to the chairman of the state committee. The State Executive Committee by majority vote of members present shall declare the true results of such primary.

**HISTORY:**
Derived from 1942 Code § 3144 [Codes, Hemingway's 1917, § 6426; 1930, § 5897; Laws, 1908, ch. 136; repealed by Laws, ch. 495, § 346]; en, Laws, 1986, ch. 495, § 281; Laws, 1988, ch. 577, § 4, eff from and after December 9, 1988 (the date the United States Attorney General interposed no objection to the amendment).

### JUDICIAL DECISIONS

#### ANALYSIS

1. In general.
2. Petititon to contest, timing.

**1. In general.**
Dismissal of an election contest by a political candidate for a statewide office was appropriate because the candidate failed to file the election contest within the twenty-day deadline under Miss. Code Ann. § 23-15-921. McDaniel v. Cochran, 158 So. 3d 992, 2014 Miss. LEXIS 535 (Miss. 2014).

When a political party Executive Committee meets to hear charges of irregularity concerning primary election contests, it sits as a quasi judicial body whose specific responsibility is to ensure the public of honest elections. The Chairman of the Committee is analogous to a judge and, in regards to recusal, an objective test is followed whereby "a judge is required to disqualify himself if a reasonable person, knowing all the circumstances, would harbor doubts about his impartiality." Pearson v. Parsons, 541 So. 2d 447, 1989 Miss. LEXIS 143 (Miss. 1989).

**2. Petititon to contest, timing.**
Statute requiring a contest of a primary election to be filed within 20 days is not a statute of limitations, but is a condition precedent to the right to file a contest, and therefore, a failure to file a contest within 20 days

does not have to be pleaded in any particular way by the contestee, and the matter may not be waived; hence action of contestee in moving to dismiss on ground the contest was not filed within 20 days after the primary election rather than in setting up such matter by special plea was not improper. Kellum v. Johnson, 237 Miss. 580, 115 So. 2d 147, 1959 Miss. LEXIS 395, 1959 Miss. LEXIS 507 (Miss. 1959).

Where a candidate for office of District Attorney, in a primary election, did not file his contest of the election results within 20 days from the date of the primary, his right to file such a contest was barred. Kellum v. Johnson, 237 Miss. 580, 115 So. 2d 147, 1959 Miss. LEXIS 395, 1959 Miss. LEXIS 507 (Miss. 1959).

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 381, 382, 384, 385 et seq.

**CJS.**

29 C.J.S., Elections §§ 403 et seq.

## § 23-15-925. Power of committee to subpoena and to attach witnesses.

For the proper enforcement of the preceding sections the committee has the power to subpoena and, if necessary, attach witnesses needed in said investigation.

**HISTORY:**

Derived from 1942 Code § 3145 [Codes, Hemingway's 1917, § 6427; 1930, § 5898; Laws, 1908, ch. 136; repealed by Laws, 1986, ch. 495, § 346]; en, Laws, 1986, ch. 495, § 282, eff from and after January 1, 1987.

### JUDICIAL DECISIONS

**1. No requirement to issue blank subpoenas.**

Where a contestant alleged irregularities in a primary election, there was no requirement in Miss. Code Ann. § 23-15-925 that the political party's executive committee issue him blank subpoenas, and its refusal to do so did not infringe on his right to have witnesses subpoenaed on his behalf to testify before the committee. Harpole v. Kemper County Democratic Exec. Comm., 908 So. 2d 129, 2005 Miss. LEXIS 463 (Miss. 2005).

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 381, 382, 384, 385 et seq.

**CJS.**

29 C.J.S., Elections §§ 403 et seq.

## § 23-15-927. Filing of protest and petition in circuit court in event of unreasonable delay by committee; requirement of certificate and cost bond; suspension of committee's order.

When and after any contest has been filed with the county executive committee, or complaint with the State Executive Committee, and the executive committee having jurisdiction fails to promptly meet or, having met, fails or unreasonably delays to fully act upon the contest or complaint or fails to give with reasonable promptness the full relief required by the facts and the law, the contestant shall have the right forthwith to file in the circuit court of the county in which the irregularities are charged to have occurred, or, if more than one (1) county is involved, then in one (1) of the counties, a sworn copy of his protest or complaint, together with a sworn petition, setting forth with particularity how the executive committee has wrongfully failed to act or to fully and promptly investigate or has wrongfully denied the relief prayed by the contest, with a prayer for a judicial review thereof. A petition for judicial review must be filed within ten (10) days after any contest or complaint has been filed with an executive committee. The petition for a judicial review shall not be filed unless it bears the certificate of two (2) practicing attorneys stating that they have each fully made an independent investigation into the matters of fact and of law upon which the protest and petition are based, and that after the investigation they believe that the protest and petition should be sustained and that the relief prayed in the protest and petitions should be granted; the two (2) attorneys may not be practicing in the same law firm. The petitioner shall give a cost bond in the sum of Three Hundred Dollars ($300.00), with two (2) or more sufficient sureties conditioned to pay all costs in case his petition be dismissed, and an additional bond may be required, by the judge, if necessary, at any subsequent stage of the proceedings. The filing of the petition for judicial review in the manner set forth in this section shall automatically supersede and suspend the operation and effect of the order, ruling or judgment of the executive committee appealed from. In no event shall a prayer for relief be filed in any court other than the appropriate circuit court as authorized in this section.

**HISTORY:**

Derived from 1972 Code § 23-3-45 [Codes, 1942, § 3182; Laws, 1935, ch. 19; Laws, 1968, ch. 567, § 1; repealed by Laws, 1986, ch. 495, § 333]; en, Laws, 1986, ch. 495, § 283; Laws, 2012, ch. 476, § 1, eff September 17, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

By letter dated September 17, 2012, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Chapter 476, Laws of 2012.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Certification of petition.
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5. — Untimely.
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7. Illustrative cases.
8. Under former Section 23-3-45, generally.
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11. —Cross-petition.
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13. —Practice and procedure.
14. —Jurisdiction.
15. —Scope of inquiry.

**1. In general.**

Miss. Code Ann. § 23-15-927 did not impermissibly violate separation of powers or Miss. Const. art. 6, § 146; rather, the judicial relief sought under the election code was unique unto itself and established by statute, until the process reached the Mississippi Supreme Court, where procedure was controlled by the Mississippi Rules of Appellate Procedure. Jackson v. Bell, 123 So. 3d 436, 2013 Miss. LEXIS 549 (Miss. 2013).

Appeal from a decision in an election contest concerning a primary mayoral race was dismissed for lack of jurisdiction under Miss. Code Ann. § 9-3-9 because documents required under Miss. Code Ann. § 23-15-927 were not included in the appellate record. Moore v. Parker, 2007 Miss. LEXIS 127 (Miss. Mar. 8, 2007), op. withdrawn, sub. op., 962 So. 2d 558, 2007 Miss. LEXIS 476 (Miss. 2007).

In a contest concerning a county election, a special tribunal had subject matter because the losing candidate's petition for judicial review complied with Miss. Code Ann. § 23-1-927; no sworn document was required in front of a county committee, the verification was sufficient, the petition for judicial review did not exceed the scope of the initial complaint, and the cost bond requirement was satisfied. Waters v. Gnemi, 907 So. 2d 307, 2005 Miss. LEXIS 321 (Miss. 2005).

The statute does not define any specific irregularities which may be reviewed by a specific county executive committee, but rather provides for the filing of a petition in the circuit court where a county executive committee delays or denies relief to the petitioner. The irregularities which may be reviewed are not limited to such things as discrepancies in vote counting, the number of voters signing the registration book as compared to the number of ballots in the ballot box, illegal votes, and the security of the ballot box. Upton v. McKenzie, 761 So. 2d 167, 2000 Miss. LEXIS 136 (Miss. 2000).

Amendment of a petition for judicial review of an election contest is permitted under § 23-15-927 since Rule 15, Miss. R. Civ. P. permits such an amendment and there is nothing in the statutes conflicting with the rules regarding amendments. Pearson v. Parsons, 541 So. 2d 447, 1989 Miss. LEXIS 143 (Miss. 1989).

A petition for judicial review of an election contest was filed in the circuit court "forthwith," as required by § 23-15-927, where the petition was filed 9 working days (a total of 13 days including 2 weekends) after the decision of the executive committee was rendered. Pearson v. Parsons, 541 So. 2d 447, 1989 Miss. LEXIS 143 (Miss. 1989).

Attorneys who are in fact representing contestant with respect to election contest are disqualified from providing certificate required by statute. McDaniel v. Beane, 515 So. 2d 949, 1987 Miss. LEXIS 2908 (Miss. 1987).

### 2. Certification of petition.

As indicated numerous times by the Mississippi supreme court, whether each of the two certifying attorneys may perform an "independent" investigation was not determined by the nature of their relationship with each other, but their association with the election contest; attorneys employed by the same firm were not incapable of performing independent investigations. Moore v. Parker, 962 So. 2d 558, 2007 Miss. LEXIS 476 (Miss. 2007).

What is required under Miss. Code Ann. § 23-15-927 to be attached to the petition for judicial review is "a sworn copy" of the petition filed with the county executive committee, not a "copy of the sworn petition" filed with the county executive committee. Court expressly overruled Robinson v. Briscoe (1976), and to the extent that Miller v. Oktibbeha County Democratic Executive Committee (1979) can be interpreted to have been decided based on Robinson, the court likewise overrules Miller. Waters v. Gnemi, 907 So. 2d 307, 2005 Miss. LEXIS 321 (Miss. 2005).

In a contest of the primary election for the office of county supervisor, an attorney who certified the petition was not disqualified by the fact that he served as attorney for the county board of supervisors at a time that the petitioner was a member of the board of supervisors. Upton v. McKenzie, 761 So. 2d 167, 2000 Miss. LEXIS 136 (Miss. 2000).

### 3. Requisites and sufficiency of petition.

Circuit court properly set aside the results of a primary election because the nominee was disqualified where she did not maintain a residence in the ward. Glenn v. Powell, 149 So. 3d 480, 2014 Miss. LEXIS 516 (Miss. 2014).

Special judge erred by dismissing a candidate's petition for review of a tax commissioner election with prejudice for the nonmerits issue of lack of jurisdiction because she failed to attach two attorney certificates to her petition, as required by Miss. Code Ann. § 23-15-927; dismissal should have been without prejudice. Jackson v. Bell, 123 So. 3d 436, 2013 Miss. LEXIS 549 (Miss. 2013).

Candidate filed his petition for judicial review of the election 15 days, including 11 working days, after the last committee meeting in which the contest was scheduled to be addressed; filing within 11 working days was not a significant departure from the nine working days the Mississippi supreme court found to be "forthwith" in a prior case, and as such the "forthwith" requirement was satisfied. Moore v. Parker, 962 So. 2d 558, 2007 Miss. LEXIS 476 (Miss. 2007).

Primary election candidate's blanket allegation implying that the incumbent sheriff illegally directed his deputies to transport prisoners to the polls never materialized into an actual claim of injustice since he never presented the claim with particularity or supported it with credible evidence. Harpole v. Kemper County Democratic Exec. Comm., 908 So. 2d 129, 2005 Miss. LEXIS 463 (Miss. 2005).

### 4. Time for filing petition — In general.

Statute contains no language requiring the petitioner to wait until the executive committee has ruled before filing a petition for judicial review; on the contrary, the statute clearly requires the petition to be filed within ten days of the filing of the complaint with the executive committee, without regard for whether the committee has ruled on the complaint, and in the event the committee rules on the election contest, the timely filing of a petition supersedes and suspends that ruling. Chandler v. McKee, 202 So. 3d 1269, 2016 Miss. LEXIS 444 (Miss. 2016).

**5. — Untimely.**

Circuit court erred in failing to grant a candidate's motion to dismiss a contestant's petition for judicial review because the petition was untimely since the contestant did not comply with the ten-day filing requirement; because the Legislature materially changed the statute by adding a ten-day filing requirement, the circuit court erred in relying on cases that interpreted previous versions of the statute. Chandler v. McKee, 202 So. 3d 1269, 2016 Miss. LEXIS 444 (Miss. 2016).

**6. Sufficiency of petition.**

Trial court erred in ruling that a contestant's petition for judicial review was fatally defective; the contestant had not been obliged to attach to the petition a copy of his initial letter to the committee requesting a recount. Harpole v. Kemper County Democratic Exec. Comm., 908 So. 2d 129, 2005 Miss. LEXIS 463 (Miss. 2005).

**7. Illustrative cases.**

Because the election at issue specifically concerned a party primary election, the case was brought squarely within the purview of the more specific Miss. Const. art. 12, § 247, wherein the people directed the Legislature to enact laws to secure fairness in party primary elections; the adoption of Miss. Code Ann. §§ 23-15-955 and 23-15-927 is clear support for the distinction. Dillon v. Myers, 227 So. 3d 923, 2017 Miss. LEXIS 134 (Miss. 2017).

Circuit court erred in allowing election officials to intervene as parties in a candidate's action contesting the results of a primary election when the statute mandated contrary duties because intervention was inconsistent with the election officials' statutory duties during judicial review of an election contest; the circuit clerk is a mandatory participant, as are the election commissioners, who serve as advisors and assistants to the trial judge. Dillon v. Myers, 227 So. 3d 923, 2017 Miss. LEXIS 134 (Miss. 2017).

Circuit court erred in finding that it lacked subject-matter jurisdiction over a candidate's action contesting the results of the Democratic primary for Mississippi House of Representatives because the primary election determined only the Democratic nominee for the general election; only the subsequent general election could result in one acquiring the right to become a member of the Legislature. Dillon v. Myers, 227 So. 3d 923, 2017 Miss. LEXIS 134 (Miss. 2017).

Judgment of a special tribunal affirming primary results was affirmed where the election contestant failed to prove that a sufficient number of illegal votes were cast to change the results of the election; although he discovered some questionable ballots during trial, it was too late to raise those issues. Boyd v. Tishomingo County Democratic Exec. Comm. & Members, 912 So. 2d 124, 2005 Miss. LEXIS 840 (Miss. 2005).

Candidate's challenge to a primary election under Miss. Code Ann. § 23-15-927 failed, as the disqualification of the absentee votes (seven percent of the total votes) was not substantial enough to cause the will of the voters to be impossible to discern and to warrant a special election, and there were not enough illegal votes cast for the incumbent to change the outcome. Harpole v. Kemper County Democratic Exec. Comm., 908 So. 2d 129, 2005 Miss. LEXIS 463 (Miss. 2005).

**8. Under former Section 23-3-45, generally.**

The chancellor appointed to determine an election contest did not err in failing to order a new election, where the illegal votes cast were only 1.9 percent or at most 3.9 percent of the total votes cast, and where the results were not changed nor was any doubt or uncertainty cast on the result being in conformity with the will of a majority of the voters. Furthermore, the chancellor did not err in allowing petitioner's opponent to amend his crosspetition by deleting certain allegations of irregularities in certain voting precincts, since pursuant to § 23-3-49 [Repealed.], he had all the power of a chancellor in term time and since the usual rules of procedure prevailed. Pyron v. Joiner, 381 So. 2d 627, 1980 Miss. LEXIS 1931 (Miss. 1980).

In a proceeding to protest an election pursuant to this section, the concurrence of the three commissioners who participated in the decision-making process fulfilled the requirements of § 23-3-51 [Repealed.], and the findings of fact by the presiding judge were not subject to review. The finding of the special tribunal convened pursuant to § 23-3-47 [Repealed.], that there was no evidence of fraud, casting of illegal votes, or that confusion caused by redistricting had any effect on the election, was supported by the evidence before the tribunal. Berryhill v. Smith, 380 So. 2d 1278, 1980 Miss. LEXIS 1889 (Miss. 1980).

Where the special tribunal held that votes of more than one-third of the voters in primary election for office of supervisor, were held void for failure to comply with mandatory provisions of the statute, it was impossible for one to reasonably say that result arrived at by the special tribunal represented the will of the voters. May v. Layton, 213 Miss. 129, 55 So. 2d 460, 56 So. 2d 89, 1951 Miss. LEXIS 519, 1952 Miss. LEXIS 340 (Miss. 1951).

Where there is a total departure from the mandatory provisions of the statute and it is not possible to ascertain the will of the electors because a substantial portion of the votes were void, a new election should be ordered for the purpose of ascertaining a voter's choice. May v. Layton, 213 Miss. 129, 55 So. 2d 460, 56 So. 2d 89, 1951 Miss. LEXIS 519, 1952 Miss. LEXIS 340 (Miss. 1951).

In a proceeding to review a primary election contest, where the court decided that each of the candidates received an equal number of votes there was a tie and neither candidate is the nominee. Hopkins v. Wilson, 212 Miss. 404, 54 So. 2d 661, 1951 Miss. LEXIS 464 (Miss. 1951).

The statute is not solely for the benefit of contestants before the executive committee, but a contestee may appear before the committee and there present in writing by answer or by answers and cross complaint all of the facts which support his side of the case, and if the action of the committee is adverse to him he may appeal to the special judicial tribunal for a review. Darnell v. Myres, 202 Miss. 767, 32 So. 2d 684, 1947 Miss. LEXIS 339 (Miss. 1947).

As in the case of a contestant, when the contestee would complain to the special judicial tribunal, he must show by exhibit with his complaint what he had placed before the executive committee, either by specific denial or by specific cross complaint, and wherein the executive committee had wrongfully acted or failed to act on what he had thus placed before the committee for its determination and action. Darnell v. Myres, 202 Miss. 767, 32 So. 2d 684, 1947 Miss. LEXIS 339 (Miss. 1947).

The purpose of the act is that the proceedings preliminary to and during the course of a judicial review of a primary election contest shall be conducted with such diligence, expedition, and dispatch as will enable the trial court to have a full and orderly hearing and to conclude it in such time that, if practically possible, a new primary, if ordered, may be held before the day of the general election in November of the same year. Turner v. Henry, 187 Miss. 689, 193 So. 631, 1940 Miss. LEXIS 239 (Miss. 1940).

**9. —Time for filing petition.**

Where the losing candidate in a municipal primary runoff election filed his original petition for judicial review 4 days after the decision of the political party's executive committee, and 15 days after that petition was dismissed by the special tribunal without prejudice he refiled for judicial review, his petition for review was filed "forthwith" within the meaning of that term as appearing in § 23-3-45 [Repealed.]. Shannon v. Henson, 499 So. 2d 758, 1986 Miss. LEXIS 2883 (Miss. 1986).

Dismissal of a petition for judicial review of a primary election on a procedural point did not justify delay in filing a new and correct petition until after propriety of the dismissal had been determined by the Supreme Court. Darnell v. Myres, 203 Miss. 276, 34 So. 2d 675, 1948 Miss. LEXIS 263 (Miss. 1948).

The word "forthwith" in this section [Code 1942, § 3182] is not susceptible of a fixed time definition, but depends upon consideration of the surrounding facts and circumstances, and varies with every particular case. Smith v. Deere, 195 Miss. 502, 16 So. 2d 33, 1943 Miss. LEXIS 181 (Miss. 1943).

Where primary was held on August 24th, the first meeting of the county executive committee on August 25th, application to examine the ballot boxes before the committee was made on August 30, which was denied by the committee, notice by the contestant of the time for hearing was September 3, petition for mandamus to compel committee to permit examination of ballot boxes was filed September 4th; the petition for a judicial review before the special tribunal was presented on October 14th; the hearing by that tribunal was on October 21st, and judgment was rendered on October 22nd, 11 days before the general election, petition to special tribunal was filed "forthwith" in compliance with this section. [Code 1942, § 3182]. Smith v. Deere, 195 Miss. 502, 16 So. 2d 33, 1943 Miss. LEXIS 181 (Miss. 1943).

Where the executive committee took action on October 4, the petition for review was filed on November 1st, and the special tribunal for the trial of the contest rendered judgment on November 13, after the general election, the filing of the petition for review was not "forthwith" within the purview of the statute, 26 days' delay being too long, under the circumstances. Turner v. Henry, 187 Miss. 689, 193 So. 631, 1940 Miss. LEXIS 239 (Miss. 1940).

A delay of 26 days in filing a petition for review, brought within the "forthwith" requirement of this section [Code 1942, § 3182] was not excused by a misconception of the petitioner as to the proper procedure. Turner v. Henry, 187 Miss. 689, 193 So. 631, 1940 Miss. LEXIS 239 (Miss. 1940).

The term "forthwith" in this section [Code 1942, § 3182] is a relative one and means within such time as to permit that which is to be done lawfully and orderly and effectually according to the practical and ordinary force of the thing or things to be performed or accomplished; and it is, therefore, not to be used by way of a penalty when accidental interventions or difficulties of which the party is not to be charged with foresight, have upset what otherwise would have been reasonable calculations as to the available time. Harris v. Stewart, 187 Miss. 489, 193 So. 339, 1940 Miss. LEXIS 226 (Miss. 1940).

Having regard to the fact that the Act fixes a specific time within which most of the steps mentioned therein are required to be taken, without specifying any time with respect to the filing of a petition for judicial review "forthwith," the Act recognizes that in this particular the fixing of a precise time limitation would be unwise and that the circumstances of each particular case should govern. Harris v. Stewart, 187 Miss. 489, 193 So. 339, 1940 Miss. LEXIS 226 (Miss. 1940).

The filing of a petition for a judicial review of a primary election of October 25 after a primary on August 29, having regard to the particular circumstances involved, satisfied the statutory requirement of a filing "forthwith." Harris v. Stewart, 187 Miss. 489, 193 So. 339, 1940 Miss. LEXIS 226 (Miss. 1940).

**10. —Requisites and sufficiency of petition.**

Losing candidate's petition for judicial review of a primary judicial election was dismissed for failure to state a cause of action because the losing candidate failed to request and view the ballots within the 12-day time frame mandated by Miss. Code Ann. § 23-15-911; additionally, his petition before the county political party's executive committee and the petition for judicial review did not demonstrate any substantially different basis for the petition or new investigation. Cook v. Brown, 909 So. 2d 1075, 2005 Miss. LEXIS 78 (Miss. 2005).

Failure of a candidate to comply with the requirement of § 23-3-45 [Repealed.] by pledging the independence of the investigation conducted into facts underlying his petition and protest regrading the results of a primary election did not require dismissal of his petition, since no allegations of bias or prejudice were made, and the challenge, which went to the fullness of the investigation that had been conducted, was the sort of inquiry proscribed by decisional law. Noxubee County Democratic Executive Committee v. Russell, 443 So. 2d 1191, 1983 Miss. LEXIS 3064 (Miss. 1983).

A special tribunal, designated to hear petitions to contest an election, properly dismissed petitioner's letter contesting election results for a supervisorial post where it was not sworn as originally filed with the Executive Committee. Miller v. Oktibbeha County Democratic Executive Committee, 377 So. 2d 917, 1979 Miss. LEXIS 2554 (Miss. 1979), overruled in part, Waters v. Gnemi, 907 So. 2d 307, 2005 Miss. LEXIS 321 (Miss. 2005).

The validity of a petition on appeal in a primary election contest, made merely on information and belief, is not to be measured by Code 1942, § 1294, modifying the rule requiring two witnesses or one witness and corroborating circumstances to overthrow and answer under oath, since the statute in question is after all but a rule of evidence. Fillingane v. Breland, 212 Miss. 423, 54 So. 2d 747, 1951 Miss. LEXIS 466 (Miss. 1951).

Since the Corrupt Practices Act does not provide a form for verification of the petition on appeal, a petition made merely on information and belief is proper where the affiant states that the allegations thereof are true and correct. Fillingane v. Breland, 212 Miss. 423, 54 So. 2d 747, 1951 Miss. LEXIS 466 (Miss. 1951).

The validity of a petition on appeal in a primary election contest, made merely on information and belief, is not to be tested by the fact that it would not support a decree if there were no answer. Fillingane v. Breland, 212 Miss. 423, 54 So. 2d 747, 1951 Miss. LEXIS 466 (Miss. 1951).

No cause of action for judicial review of a primary election contest exists unless a sworn copy of the contestant's protest or contest before the executive committee is made a part of his petition. Darnell v. Myres, 202 Miss. 767, 32 So. 2d 684, 1947 Miss. LEXIS 339 (Miss. 1947).

Allegations and proof by a contestant or a petition for judicial review of a primary election that a number of illegal votes were cast and counted to change the result of the election was sufficient, and he was not required to prove that enough of the illegal votes were actually cast for the contestee to give him the apparent, although not real, majority. Harris v. Stewart, 187 Miss. 489, 193 So. 339, 1940 Miss. LEXIS 226 (Miss. 1940).

In order for it to appear that the executive committee has wrongfully denied the relief sought, it must appear either from the petition or exhibits thereto that if the matters complained of should be decided in the complainant's favor, the result would be that he and not the contestee would be the nominee for the office in question; without an allegation to that effect, the petition presents no cause of action. Hickman v. Switzer, 186 Miss. 720, 191 So. 486, 1939 Miss. LEXIS 259 (Miss. 1939).

A petition for judicial review complaining of the dismissal by the executive committee of the petitioner's protest, a copy of which showed that it merely challenged the vote of one voting precinct without setting forth what the effect of sustaining the challenge and discarding the vote of the precinct would be as to whether it would change the result arrived at by the executive committee, was insufficient to constitute a cause of action under this section. Hickman v. Switzer, 186 Miss. 720, 191 So. 486, 1939 Miss. LEXIS 259 (Miss. 1939).

It is contemplated by this section [Code 1942, § 3182] that, when a person desires to contest the nomination of another person and has the purpose to follow up his contest by a petition for a judicial review, his contest or petition or complaint before the executive committee shall be reasonably specific in his charges and not in mere general language. Shaw v. Burnham, 186 Miss. 647, 191 So. 484, 1939 Miss. LEXIS 258 (Miss. 1939).

**11. —Cross-petition.**

The petition of a contestee for judicial review must be accompanied by a sworn exhibit of what issues he placed before the executive committee; this requirement cannot be met after the petition has been filed by annexing by way of amendment a sworn copy of the contestee's answer. Darnell v. Myres, 202 Miss. 767, 32 So. 2d 684, 1947 Miss. LEXIS 339 (Miss. 1947).

When a contestant has made charges of wrong or illegality before the executive committee, the contestee, as a matter of right, may file a cross complaint with the committee, the cross complaint to be in reasonably specific and particular terms and not in assertions of mere generalities. Shaw v. Burnham, 186 Miss. 647, 191 So. 484, 1939 Miss. LEXIS 258 (Miss. 1939).

**12. —Certificate of practicing attorneys.**

An attorney who is "of counsel" to the firm in which the petitioner's attorney is a partner is not eligible to make the certification of a practicing attorney that an independent assessment of the claim has been made. Esco v. Scott, 735 So. 2d 1002, 1999 Miss. LEXIS 104 (Miss. 1999), overruled in part, Jackson v. Bell, 123 So. 3d 436, 2013 Miss. LEXIS 549 (Miss. 2013).

The evident and material purpose of the requirement of the certificate of two independent practicing attorneys was to prevent, or at least to minimize, the bringing before the courts of captious or unsubstantial political contests of primary elections-that such a certificate would independently show that there was real merit from a substantial legal standpoint in the proposed contents, and would tend to forestall, in a large measure, spiteful partisan litigation which would needlessly cast doubt upon the future title of the successful candidates in the nomination for the public office involved. Harris v. Stewart, 187 Miss. 489, 193 So. 339, 1940 Miss. LEXIS 226 (Miss. 1940).

The only facts which will disqualify a certifying attorney are: Employment of the attorney, past, present, contingent or prospective, by or for the contestant as his attorney in respect to the manner involved in the contest, or such facts as will disqualify a judge under § 165, Constitution 1890. Harris v. Stewart, 187 Miss. 489, 193 So. 339, 1940 Miss. LEXIS 226 (Miss. 1940).

The investigation of a certifying attorney, as a quasi judicial officer, is not subject to a collateral inquiry as to how he made his investigation or how fully he made it. Harris v. Stewart, 187 Miss. 489, 193 So. 339, 1940 Miss. LEXIS 226 (Miss. 1940).

The fact that a certifying attorney had an office on the same floor with one of the attorneys for the petitioner, and that he and petitioner's attorney were intimate friends and often associated together in cases, did not disqualify him under this section. Harris v. Stewart, 187 Miss. 489, 193 So. 339, 1940 Miss. LEXIS 226 (Miss. 1940).

The certificate of two disinterested attorneys, required by this section [Code 1942, § 3182] to accompany a petition for judicial review, is just as important as the petition itself, and is jurisdictional. Pearson v. Jordan, 186 Miss. 789, 192 So. 39, 1939 Miss. LEXIS 283 (Miss. 1939).

Where one of the two attorneys signing the certificate required by this section [Code 1942, § 3182] was an attorney in the case throughout the proceedings and was of counsel in the appeal, such certificate was equivalent to no certificate at all, so that the special tribunal was without jurisdiction to hear and determine the cause. Pearson v. Jordan, 186 Miss. 789, 192 So. 39, 1939 Miss. LEXIS 283 (Miss. 1939).

The certificate required to accompany the petition for judicial review signed by attorneys who represent a contestant at the time their investigation of the matter is made, or at the time his petition for a judicial review is filed, is not a compliance with this section. Pittman v. Forbes, 186 Miss. 783, 191 So. 490, 1939 Miss. LEXIS 263 (Miss. 1939).

The purpose of the provision of this section [Code 1942, § 3182] requiring a petition for a judicial review to be accompanied by a certificate of two practicing attorneys is to prevent persons declared party nominees from being harassed with trivial applications for a judicial review thereof, and contemplate, as the word "independent" connotes, a certificate by lawyers who are without bias or prejudice. Pittman v. Forbes, 186 Miss. 783, 191 So. 490, 1939 Miss. LEXIS 263 (Miss. 1939).

**13. —Practice and procedure.**

Miss. Code Ann. § 23-15-927 is silent regarding the amendment of pleadings. Therefore, Miss. R. Civ. P. 15(a) controls and amendments are allowed at any time before a responsive pleading is served; in the case at bar, no responsive pleading from the County Democratic Executive Committee was on record, and even if there was a response by the Committee served upon the candidate (who opposed the holding of a new primary election), in the record, Miss. R. Civ. P. 15(a) allowed the amendment of pleadings after a responsive pleading was served "by leave of the court." Jefferson Davis County v. Davies, 912 So. 2d 837, 2005 Miss. LEXIS 212 (Miss. 2005).

Where the original protest charged that only one ballot was illegally marked in ordinary pencil, the finding of the tribunal on appeal must be restricted to such allegation notwithstanding that an examination of the ballots showed that there were three such ballots cast for the contestee, since the petition on appeal may not overrun the allegations of the original protest. Fillingane v. Breland, 212 Miss. 423, 54 So. 2d 747, 1951 Miss. LEXIS 466 (Miss. 1951).

In matters of practice and procedure under this act, in respect to which the act itself is silent, there will be applied the usual rules of procedure which prevail as regards other cases, and, therefore, §§ 594 and 595, Code of 1930 [Code 1942, §§ 1538, 1539], and the established practice thereunder, will apply to a petition for judicial review, as well as to any other action in a court, in the manner of voluntary dismissal without prejudice. Harris v. Stewart, 187 Miss. 489, 193 So. 339, 1940 Miss. LEXIS 226 (Miss. 1940).

When a contestant has complied with the requirement of first filing his contest with and before the county executive committee, and although his petition for a judicial review must not assign any new or additional cause of action, it may be both amendatory of the causes of action or grounds for relief, as preferred before the executive committee, and supplementary as to all those material facts which happen during and since the hearing before the executive committee. Harris v. Stewart, 187 Miss. 489, 193 So. 339, 1940 Miss. LEXIS 226 (Miss. 1940).

### 14. —Jurisdiction.

With respect to a mayoral candidate who, in filing a petition for judicial review of an election contest, provided a cost bond of $300 cash without naming sureties, a circuit court erred in dismissing the petition for lack of jurisdiction because the payment itself satisfied the cost-bond requirement in its entirety. Sumner v. City of Como Democratic Exec. Comm., 972 So. 2d 616, 2008 Miss. LEXIS 41 (Miss. 2008).

Candidate who challenged the decision of the County Democratic Executive Committee, which decided to hold a new primary election based on alleged improperly executed absentee ballots, correctly asserted in his petition, contrary to the allegations of the Committee, that the circuit court had jurisdiction pursuant to Miss. Code Ann. § 23-15-927. The circuit court properly allowed the amendment of the candidate's unsworn petition by sworn testimony as to its content at the hearing, pursuant to Miss. R. Civ. P. 15(a), which controlled. Jefferson Davis County v. Davies, 912 So. 2d 837, 2005 Miss. LEXIS 212 (Miss. 2005).

In a state party primary election, protesting candidate filed a contest with the state party's executive committee alleging that errors in some precincts prevented citizens of a certain district from voting in the election; the officials of the state party's executive committee were concerned that they would not have time before the general election to decide the issue; therefore, pursuant to Miss. Code Ann. § 23-15-927, the protesting candidate seized the reins of his complaint and steered it directly to trial court, which was a completely permissible procedure and, thus, the trial court had jurisdiction to hear the election contest. Barbour v. Gunn, 890 So. 2d 843, 2004 Miss. LEXIS 338 (Miss. 2004).

There is no jurisdiction to review the action of the executive committee if the contestants made no protest or contest in writing before that committee. Darnell v. Myres, 202 Miss. 767, 32 So. 2d 684, 1947 Miss. LEXIS 339 (Miss. 1947).

Where one of the two attorneys signing the certificate required by this section was an attorney in the case throughout the proceedings and was of counsel in the appeal, such certificate was equivalent to no certificate at all, so that the special tribunal was without jurisdiction to hear and determine the cause. Pearson v. Jordan, 186 Miss. 789, 192 So. 39, 1939 Miss. LEXIS 283 (Miss. 1939).

### 15. —Scope of inquiry.

In a proceeding for judicial review of executive committee's order rescinding its order declaring the petitioner a nominee, the special tribunal did not have authority to determine that respondent, because of alleged violations of Corrupt Practices Act, was disqualified from holding the office of supervisor and for that reason could not run for the Democratic Primary and perhaps become a nominee for that office. Blakeney v. Mayfield, 226 Miss. 53, 83 So. 2d 748, 1955 Miss. LEXIS 606 (Miss. 1955).

Only matters presented by the original contest or protest before the executive committee can be reviewed or examined by the special judicial tribunal, except as to germane matters which happened during or since the executive committee hearing and matters which are merely explanatory or incidental. Darnell v. Myres, 202 Miss. 767, 32 So. 2d 684, 1947 Miss. LEXIS 339 (Miss. 1947).

Whether the particular issues are presented by the contestant or by the contestee, it is the duty of the executive committee to act upon them, and its action, or refusal to act then comes within the scope of the inquiry which either the contestant or the contestee may present by proper petition and answer thereto before the special judicial tribunal called out the act. Shaw v. Burnham, 186 Miss. 647, 191 So. 484, 1939 Miss. LEXIS 258 (Miss. 1939).

### RESEARCH REFERENCES

**ALR.**

State court jurisdiction over contest involving primary election for member of Congress. 68 A.L.R.2d 1320.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 381, 382, 384, 385 et seq.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 101-106 (election contests).

**CJS.**

29 C.J.S., Elections §§ 403 et seq.

**Law Reviews.**

1987 Mississippi Supreme Court Review, Elections, 57 Miss LJ 427, August, 1987.

## § 23-15-929. Designation of circuit judge or retired judge on senior status to determine contest; notice; answer and cross-complaint.

Upon the filing of the petition and bond as provided for in Section 23-15-927, the circuit clerk shall immediately, by registered letter or by telegraph or telephone, or personally, notify the Chief Justice of the Supreme Court, or, in his absence, or disability, some other judge of the Supreme Court, who shall forthwith designate and notify a circuit judge or a retired judge on senior status of a district other than that which embraces the county or any of the counties, involved in the contest or complaint, to proceed to the county in which the contest or complaint has been filed to hear and determine the contest or complaint, and it shall be the official duty of the trial judge to proceed to the discharge of the designated duty at the earliest possible date to be fixed by the judge and of which the contestant and contestee shall have reasonable notice, to be served in such reasonable manner as the judge may direct, in response to which notice the contestee shall promptly file his answer, and also his cross-complaint if he has one to prefer.

**HISTORY:**

Derived from 1972 Code § 23-3-47 [Codes, 1942, § 3183; Laws, 1935 ch. 19; repealed by Laws, 1986, ch. 495, § 333]; en, Laws, 1986, ch. 495, § 284; Laws, 2012, ch. 476, § 2, eff September 17, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

By letter dated September 17, 2012, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Chapter 476, Laws of 2012.

### JUDICIAL DECISIONS

#### ANALYSIS

1. In general.
2.-5. [Reserved for future use.]
6. Under former Section 23-3-47.

**1. In general.**

Trial court was correct in overruling the decision of the Jefferson Davis County Democratic Executive Committee, to conduct a new election for the Democratic nominee for Jefferson Davis County Chancery Clerk. The requirements to hold a new election under Miss. Code Ann. § 23-15-593 were not met, as § 23-15-593 authorized new elections for individual precincts if the requirements were met, not a new election county or district wide. To have held a new election county wide, the Committee would had to have determined that all precincts failed in material particulars to comply with the requirements of Miss. Code Ann. §§ 23-15-591 and 23-15-895 to such an extent that it was impossible to arrive at the will of the voters; there was no evidence that there were violations of Miss. Code Ann. §§ 23-15-591 and 23-15-895 and the committee exceeded its authority under Miss. Code Ann. § 23-15-593 in ordering a new election. Jefferson Davis County v. Davies, 912 So. 2d 837, 2005 Miss. LEXIS 212 (Miss. 2005).

Although § 23-15-935 grants the special judge the power to compel the attendance of the election commissioners, this statute contemplates a situation where the special judge, in the interest of time and judicial efficiency, can proceed to hear the election contest without any one of the commissioners or all of them; the statutory framework relating to election contests requires that they be completed as quickly as possible in order that the scheduled primary elections can proceed as planned, as indicated by § 23-15-929 which directs the special judge to determine the election contest "at the earliest possible date." Hatcher v. Fleeman, 617 So. 2d 634, 1993 Miss. LEXIS 149 (Miss. 1993), overruled in part, Smith v. Hollins, 905 So. 2d 1267, 2005 Miss. LEXIS 388 (Miss. 2005).

Section 23-15-929, which directs that the judge appointed by the Chief Justice of the Supreme Court hear the election contest at the earliest possible date, should not be used as a penalty when accidental interventions or difficulties have upset what otherwise would have been reasonable calculations as to the available time. Pearson v. Parsons, 541 So. 2d 447, 1989 Miss. LEXIS 143 (Miss. 1989).

Among the members of a special tribunal formed to hear election contests, the special judge is the "controlling judge" of both the facts and the law, though the election commissioners sit as advisors in the determination of facts. Rizzo v. Bizzell, 530 So. 2d 121, 1988 Miss. LEXIS 325 (Miss. 1988).

**2.-5. [Reserved for future use.]**

**6. Under former Section 23-3-47.**

Since the proceedings in a judicial review of a municipal primary election contest are in the nature of an appeal, no matter may be presented to the special tribunal which has not been previously heard and decided by the executive committee of the party. Shannon v. Henson, 499 So. 2d 758, 1986 Miss. LEXIS 2883 (Miss. 1986).

In a proceeding to protest an election pursuant to § 23-3-45 [Repealed.], the concurrence of the three commissioners who participated in the decision-making process fulfilled the requirements of § 23-3-51 [Repealed.], and the findings of fact by the presiding judge were not subject to review. The finding of the special tribunal convened pursuant to this section, that there was no evidence of fraud, casting of illegal votes, or that confusion caused by redistricting had any effect on the election, was supported by the evidence before the tribunal. Berryhill v. Smith, 380 So. 2d 1278, 1980 Miss. LEXIS 1889 (Miss. 1980).

Where a petition for judicial review has been filed, and the petitioner takes a voluntary nonsuit, the chief justice is not without power to make a second designation of a judge to hear the same matter upon the filing of a second petition. Harris v. Stewart, 187 Miss. 489, 193 So. 339, 1940 Miss. LEXIS 226 (Miss. 1940).

Upon the overruling of a demurrer to a petition for judicial review of a primary election and the contestee's declination to plead further, all the averments of the petition properly pleaded are to be taken as true in view of the concluding lines of this section. Harris v. Stewart, 187 Miss. 489, 193 So. 339, 1940 Miss. LEXIS 226 (Miss. 1940).

## RESEARCH REFERENCES

**ALR.**

State court jurisdiction over contest involving primary election for member of Congress. 68 A.L.R.2d 1320.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 381, 382, 384, 385 et seq.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 107, 108 (election contests).

**CJS.**

29 C.J.S., Elections §§ 403 et seq.

**Law Reviews.**

1987 Mississippi Supreme Court Review, Elections, 57 Miss LJ, 427, August, 1987.

### § 23-15-931. Issuance of subpoenas and summonses by circuit clerk prior to hearing; assistance by, and findings of, election commissioners; entry of judgment by trial judge.

When the day for the hearing has been set, the circuit clerk shall issue subpoenas for witnesses as in other litigated cases, and he shall also issue a summons to each of the five (5) election commissioners of the county, unless they waive summons, requiring them to attend the hearing, throughout which the commissioners shall sit with the judge as advisors or assistants in the trial and determination of the facts, and as assistants in counts, calculations and inspections, and in seeing to it that ballots, papers, documents, books and the like are diligently secured against misplacement, alteration, concealment or loss both in the sessions and during recesses or adjournments. The judge is, however, the controlling judge both of the facts and the law, and has all the power in every respect of a circuit judge in termtime. The tribunal shall be attended by the sheriff, and clerk, each with sufficient deputies, and by a court reporter. The special tribunal so constituted shall fully hear the contest or complaint de novo, and the original contestant before the party executive committee shall have the burden of proof and the burden of going forward with the evidence in the hearing before the special tribunal. The special tribunal, after the contest or complaint has been fully heard anew, shall make a finding dictated to the reporter covering all controverted material issues of fact, together with any dissents of any commissioner, and thereupon, the trial judge shall enter the judgment which the county executive committee should have entered, of which the election commissioners shall take judicial notice, or if the matter be one within the jurisdiction of the State Executive Committee, the judgment shall be certified and promptly forwarded to the Secretary of the State Executive Committee, and, in the absence of an appeal, it shall be the duty of the State Executive Committee forthwith to reassemble and revise any decision theretofore made by it so as to conform to the judicial judgment; that when the contest is upon a complaint filed with the State Executive Committee and the petition to the court avers that the wrong or irregularity is one which occurred wholly within the proceedings of the state committee, the petition to the court shall be filed in the Circuit Court of Hinds County and, after notice served, shall be promptly heard by the circuit judge of that county, without the attendance of commissioners.

**HISTORY:**

Derived from 1972 Code § 23-3-49 [Codes, 1942, § 3184; Laws, 1935, ch. 19; Laws, 1968, ch. 567, § 2; repealed by Laws, 1986, ch. 495, § 333]; Laws, 1986, ch. 495, § 285; Laws, 2012, ch. 476, § 3, eff September 17, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

By letter dated September 17, 2012, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Chapter 476, Laws of 2012.

**Cross References —**

Issuance of a warrant for the arrest of a candidate, an election officer, or any other person by a trial judge hearing a primary election contest or complaint under this section, see § 23-15-941.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2.-5. [Reserved for future use.]
6. Under former Section 23-3-49.

**1. In general.**

Circuit court erred in allowing election officials to intervene as parties in a candidate's action contesting the results of a primary election when the statute mandated contrary duties because intervention was inconsistent with the election officials' statutory duties during judicial review of an election contest; the circuit clerk is a mandatory participant, as are the election commissioners, who serve as advisors and assistants to the trial judge. Dillon v. Myers, 227 So. 3d 923, 2017 Miss. LEXIS 134 (Miss. 2017).

By virtue of § 23-15-931, the special judge is the "controlling judge" of both the facts and the law in an election contest hearing, though the election commissioners sit as advisors to the determination of the facts; the statute strongly suggests that the special judge is the "true trier of facts." Hatcher v. Fleeman, 617 So. 2d 634, 1993 Miss. LEXIS 149 (Miss. 1993), overruled in part, Smith v. Hollins, 905 So. 2d 1267, 2005 Miss. LEXIS 388 (Miss. 2005).

The trial court in a judicial review of a primary election contest had the authority to require the withdrawal of both parties' attorneys where the judge was told that both attorneys were to be witnesses on the contested issues of the election. Pearson v. Parsons, 541 So. 2d 447, 1989 Miss. LEXIS 143 (Miss. 1989).

Administrative law and procedures apply to a trial de novo of an election committee. It is a trial de novo when new and additional evidence is received by the Special Tribunal in addition to the proceedings below and when the executive committee's findings are not considered as conclusive. Pearson v. Parsons, 541 So. 2d 447, 1989 Miss. LEXIS 143 (Miss. 1989).

**2.-5. [Reserved for future use.]**

**6. Under former Section 23-3-49.**

State judicial elections come within coverage of "results test" provisions of § 2 of Voting Rights Act of 1965 (42 USCS § 1973), as amended in 1982; if term "representatives" limited coverage with respect to judicial elections, limitation would exclude all claims involving judicial elections; better reading of term describes winners of representative, popular elections. Chisom v. Roemer, 501 U.S. 380, 111 S. Ct. 2354, 115 L. Ed. 2d 348, 1991 U.S. LEXIS 3627 (U.S. 1991).

The chancellor appointed to determine an election contest did not err in failing to order a new election, where the illegal votes cast were only 1.9 percent or at most 3.9 percent of the total votes cast, and where the results were not changed nor was any doubt or uncertainty cast on the result being in conformity with the will of a majority of the voters. Furthermore, the chancellor did not err in allowing the petitioner's opponent to amend his cross-petition by deleting certain allegations of irregularities in certain voting precincts, since pursuant to this section he had all the power of a chancellor in term time and since the usual rules of procedure prevailed. Pyron v. Joiner, 381 So. 2d 627, 1980 Miss. LEXIS 1931 (Miss. 1980).

A petition for judicial review of a primary election contest 22 days thereafter satisfies the requirement that such a petition be filed "forthwith," where filed immediately upon the dismissal, for failure to meet statutory requirements, of a petition filed six days thereafter. Wallace v. Leggett, 248 Miss. 121, 158 So. 2d 746, 1963 Miss. LEXIS 382 (Miss. 1963).

In a proceeding for judicial review for executive committee's order rescinding its order declaring the petitioner a nominee, the special tribunal did not have authority to determine that respondent, because of alleged violations of Corrupt Practices Act, was disqualified from holding an office of supervisor and for that reason could not run for the Democratic Primary and perhaps become a nominee for that office. Blakeney v. Mayfield, 226 Miss. 53, 83 So. 2d 748, 1955 Miss. LEXIS 606 (Miss. 1955).

Evidence that after counting of ballots and before recount thereof circuit clerk failed to seal the ballot boxes in question and to keep a record of the seals as required by statute, and that such boxes and their contents were tampered with, warranted affirmance of order of special tribunal adjudging validity of election ballots as against contestant who received a majority on account. Allen v. Funchess, 195 Miss. 486, 15 So. 2d 343, 1943 Miss. LEXIS 143 (Miss. 1943).

Where special tribunal's findings of fact were unanimously concurred in, the only recourse of contestant on appeal was to show either that there was no evidence whatever to sustain the findings, or that there was no substantial evidence in support of the finding. Allen v. Funchess, 195 Miss. 486, 15 So. 2d 343, 1943 Miss. LEXIS 143 (Miss. 1943).

Since the clerk of the circuit court is the clerk of the special tribunal, filing of bill of exceptions and cost bond by contestant, within time allotted for appeal by special tribunal, in the office of the circuit clerk and such clerk's approval of bonds, were sufficient to place appeal in supreme court. Evans v. Hood, 195 Miss. 743, 15 So. 2d 37, 1943 Miss. LEXIS 134 (Miss. 1943).

Where a contestant proved that sufficient illegal votes were cast at the primary election to change the result thereof, the lower court properly ordered another primary election. Harris v. Stewart, 187 Miss. 489, 193 So. 339, 1940 Miss. LEXIS 226 (Miss. 1940).

The special tribunal set up by the corrupt practices act has no authority to go beyond ascertaining the will of the qualified electors participating in the party primary, and in this regard, it has authority and duty to determine whether those voting or offering to vote are qualified electors and entitled to vote, and whether in all substantial respects the election was fairly and honestly held in compliance with the various provisions of the law. McKenzie v. Thompson, 186 Miss. 524, 191 So. 487, 1939 Miss. LEXIS 260 (Miss. 1939).

The special tribunal, under this section, is limited in its jurisdiction to determining the fairness of the primary election and the correctness of the result and has no jurisdiction to pass upon the qualifications of the successful candidate and determine his right to hold the office, if elected, since the latter raises a public and not a private question, the only remedy being in the nature of a quo warranto as to the general election under Section 3053, Code 1930 [Code 1942, § 1120]. McKenzie v. Thompson, 186 Miss. 524, 191 So. 487, 1939 Miss. LEXIS 260 (Miss. 1939).

**Cited in:** Jefferson Davis County v. Davies, 912 So. 2d 837, 2005 Miss. LEXIS 212 (Miss. 2005).

## RESEARCH REFERENCES

**ALR.**

Admissibility of parol evidence of election officials to impeach election returns. 46 A.L.R.2d 1385.

State court jurisdiction over contest involving primary election for member of Congress. 68 A.L.R.2d 1320.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 381, 382, 384, 385 et seq.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 101-115 (election contests).

**CJS.**

29 C.J.S., Elections §§ 403 et seq.

## § 23-15-933. Appeal from judgment; restrictions upon review of findings of fact.

The contestant or contestee, or both, may file an appeal in the Supreme Court within the time and under such conditions and procedures as are established by the Supreme Court for other appeals. If the findings of fact have been concurred in by all the commissioners in attendance, provided as many as three (3) commissioners are and have been in attendance, the facts shall not be subject to appellate review. But if not so many as three (3) of the commissioners are or have been in attendance, or if one or more commissioners dissent, upon review, the Supreme Court may make such findings as the evidence requires.

**HISTORY:**

Derived from 1972 Code § 23-3-51 [Codes, 1942, § 3185; Laws, 1935, ch. 19; Laws, 1968, ch. 567, § 3; repealed by Laws, 1986, ch. 495, § 333]; en, Laws, 1986, ch. 495, § 286, eff from and after January 1, 1987; Laws, 1991, ch. 573, § 108, eff from and after July 1, 1991.

**Editor's Notes —**

The United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1991, ch. 573, § 108, on August 14, 1991.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2.-5. [Reserved for future use.]
6. Under former Section 23-3-51, generally.
7. —Contents of bill of exceptions.
8. —Appeal bonds.

**1. In general.**

Appellant argued that nothing suggested what commissioners attended which days of the hearings, but the statute contains no roll-call requirement that, at each hearing, requires the making of a list of which commissioners were present for the statute to apply. Bryant v. Dickerson, 236 So. 3d 28, 2017 Miss. LEXIS 436 (Miss. 2017).

Appellant's claims were based on the circuit court's factual finding that he was a resident of Sunflower County, but such factual finding was not subject to the court's review pursuant to the statute. Bryant v. Dickerson, 236 So. 3d 28, 2017 Miss. LEXIS 436 (Miss. 2017).

While Miss. Code Ann. § 23-15-933 deems final the tribunal's findings of fact, its legal conclusions are reviewable by the Mississippi supreme court on appeal, and the statute presents no bar to any issues in the case since all issues presented were questions of law; moreover, the issues raised for the supreme court's consideration did not require review of the findings of fact the tribunal made with regard to the nine fraudulently voted ballots. Moore v. Parker, 962 So. 2d 558, 2007 Miss. LEXIS 476 (Miss. 2007).

Where only two of the three commissioners who participated in the result concurred fully in the judge's findings, the third commissioner dissented in part, and the part to which that commissioner dissented was not in the record, the court was free to make such findings as the evidence required. Campbell v. Whittington, 733 So. 2d 820, 1999 Miss. LEXIS 99 (Miss. 1999).

Determination of intent of voters of certain contested ballots is by its very nature fact inquiry to be made by Special Tribunal and Supreme Court's duty is to respect Special Tribunal's findings where it was not manifestly wrong. Wade v. Williams, 517 So. 2d 573, 1987 Miss. LEXIS 2971 (Miss. 1987).

**2.-5. [Reserved for future use.]**

**6. Under former Section 23-3-51, generally.**

In a proceeding to protest an election pursuant to § 23-3-45 [Repealed.], the concurrence of the three commissioners who participated in the decision-making process fulfilled the requirements of this section, and the findings of fact by the presiding judge were not subject to review. The finding of the special tribunal convened pursuant to § 23-3-47 [Repealed.], that there was no evidence of fraud, casting of illegal votes, or that confusion caused by redistricting had any effect on the election, was supported by the evidence before the tribunal. Berryhill v. Smith, 380 So. 2d 1278, 1980 Miss. LEXIS 1889 (Miss. 1980).

By this section [Code 1942, § 3185] the Legislature intended to facilitate speedy appeals in primary election contests. Anders v. Longmire, 226 Miss. 215, 83 So. 2d 828, 1955 Miss. LEXIS 627 (Miss. 1955).

Where special tribunal's findings of fact were unanimously concurred in, the only recourse of contestant on appeal was to show either that there was no evidence whatever to sustain the findings, or that there was no substantial evidence in support of the finding. Allen v. Funchess, 195 Miss. 486, 15 So. 2d 343, 1943 Miss. LEXIS 143 (Miss. 1943).

Evidence that after counting of ballots and before recount thereof circuit clerk failed to seal the ballot boxes in question and to keep a record of the seals as required by statute, and that such boxes and their contents were tampered with, warranted affirmance of order of special tribunal adjudging election ballots as against contestant who received a majority on recount. Allen v. Funchess, 195 Miss. 486, 15 So. 2d 343, 1943 Miss. LEXIS 143 (Miss. 1943).

The special tribunal provided for hereunder is a proper inferior court from which an appeal might be taken direct to the Supreme Court. Hayes v. Abney, 186 Miss. 208, 188 So. 533, 1939 Miss. LEXIS 209 (Miss. 1939).

A special tribunal, consisting of a circuit judge and the municipal election commissioners, was such an inferior court as might be established under § 172, Const of 1890. Hayes v. Abney, 186 Miss. 208, 188 So. 533, 1939 Miss. LEXIS 209 (Miss. 1939).

Requirement of statute that appeals from decisions in election contests to Supreme Court shall be "referred to the court in banc" held not binding on Supreme Court, since constitutional amendment providing for separation of court into two divisions delegates to court itself and not to legislature duty of determining which cases shall be heard by division and which by court sitting in banc. Tillman v. Massa, 177 Miss. 170, 170 So. 641, 1936 Miss. LEXIS 243 (Miss. 1936).

**7. —Contents of bill of exceptions.**

In a primary election contest where the appointed judge and the election commissioners unanimously found as to number of ballots cast, the attaching of transcripts of testimony before special tribunal to the appellant's bill of exceptions to the Supreme Court was in the face of the express prohibition of this section. [Code 1942, § 3185]. Anders v. Longmire, 226 Miss. 215, 83 So. 2d 828, 1955 Miss. LEXIS 627 (Miss. 1955).

Purported bill of exceptions on appeal from decision of judge and election commissioners in election contest setting up some of contentions but failing to set up points of law with rulings thereon with synopsis of pertinent evidence and rulings sought to be reversed, nor containing statement signed by trial judge that bill was a correct statement of proceedings, but stating that bill did not set up facts established by cross-examination of witnesses by contestees or examination by trial judge, and was never presented to and signed by two attorneys as provided by statute on failure or refusal of trial judge to sign, held insufficient to confer jurisdiction on Supreme Court. McDonald v. Spence, 179 Miss. 342, 174 So. 54, 1937 Miss. LEXIS 11 (Miss. 1937).

Contents of bill of exceptions contemplated by Corrupt Practices Act on appeal in election contest must include petition, answers, and exhibits thereto, points raised before special tribunal, setting forth rulings thereon, and pertinent facts necessary to an understanding thereof, in absence of which jurisdiction is not conferred on Supreme Court, and does not authorize sending up of stenographer's notes except in case of disagreement as to facts between judge and one or more of election commissioners. McDonald v. Spence, 179 Miss. 342, 174 So. 54, 1937 Miss. LEXIS 11 (Miss. 1937).

**8. —Appeal bonds.**

The filing of an appeal bond with the clerk of supreme court within the time allowed by this section [Code 1942, § 3185] constitutes a sufficient filing of the bond. May v. Layton, 213 Miss. 129, 55 So. 2d 460, 56 So. 2d 89, 1951 Miss. LEXIS 519, 1952 Miss. LEXIS 340 (Miss. 1951); Evans v. Hood, 195 Miss. 743, 15 So. 2d 37, 1943 Miss. LEXIS 134 (Miss. 1943).

In view of the fact that statute governing appeal from judgment of special tribunal in election contests is silent as to where required bond shall be filed or who shall approve it, and the fact that the clerk of the circuit court is by the statute the clerk of the special tribunal, a circuit clerk, under the usual rules of procedure, is the person with whom the appeal bond is to be filed and by whom it is to be approved, in order to place appeal in supreme court. Evans v. Hood, 195 Miss. 743, 15 So. 2d 37, 1943 Miss. LEXIS 134 (Miss. 1943).

**Cited in:** Jefferson Davis County v. Davies, 912 So. 2d 837, 2005 Miss. LEXIS 212 (Miss. 2005).

### RESEARCH REFERENCES

**ALR.**

State court jurisdiction over contest involving primary election for member of Congress. 68 A.L.R.2d 1320.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 393-439.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 115 (election contests).

**CJS.**

29 C.J.S., Elections §§ 522-535.

## § 23-15-935. Attendance or absence of election commissioners at hearing.

The trial judge shall have the same power to compel the attendance of the election commissioners upon and throughout the hearings as is given to the judge of a circuit court to compel the attendance of jurors, and the commissioners must attend unless physically unable so to do. But if any one or more or all of the commissioners are absent so as to not be served with notice, or is or are physically unable to attend, the trial judge shall proceed without them or any of them, so that the hearing shall not be delayed on their account or on account of any one or more of them. When, under Section 23-15-937, the hearing is transferred in whole or in part to another county or counties, the election commissioners of the county or counties to which the hearing is transferred shall attend the hearings in their respective counties, subject to foregoing provisions in respect to absent or disabled commissioners.

**HISTORY:**

Derived from 1972 Code § 23-3-53 [Codes, 1942, § 3186; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, § 333]; en, Laws, 1986, ch. 495, § 287, eff from and after January 1, 1987.

### JUDICIAL DECISIONS

**1. In general.**

Although § 23-15-935 grants the special judge the power to compel the attendance of the election commissioners, this statute contemplates a situation where the special judge, in the interest of time and judicial efficiency, can proceed to hear the election contest without any one of the commissioners or all of them; the statutory framework relating to election contests requires that they be completed as quickly as possible in order that the scheduled primary elections can proceed as planned, as indicated by § 23-15-929 which directs the special judge to determine the election contest "at the earliest possible date." Hatcher v. Fleeman, 617 So. 2d 634, 1993 Miss. LEXIS 149 (Miss. 1993), overruled in part, Smith v. Hollins, 905 So. 2d 1267, 2005 Miss. LEXIS 388 (Miss. 2005).

### RESEARCH REFERENCES

**ALR.**

State court jurisdiction over contest involving primary election for member of Congress. 68 A.L.R.2d 1320.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 393-439.

**CJS.**

29 C.J.S., Elections §§ 505-512.

## § 23-15-937. Transfer of hearing; requirement of prompt adjudication; circumstances requiring special election.

If more than one (1) county is involved in a contest or complaint, the judge shall have the authority to transfer the hearing to a more convenient county within the district, if the contest or complaint involves a district office, or within the state if the contest or complaint involves a state office; or the judge may proceed to any county or counties in which the facts complained of are charged to have transpired, and there hear the evidence and make a finding of facts relating to that county and any convenient neighboring county or counties, but, in any event, if possible with due diligence to do so, the hearing must be completed and final judgment rendered in time to permit the printing and distribution of the official ballots at the election for which the contested nomination is made. When any judge lawfully designated to hear a contest or complaint shall not promptly and diligently proceed with the hearing and final determination of the contest or complaint, he shall be guilty of a high misdemeanor in office unless excused by actual illness, or by an equivalent excuse. When no final decision has been made by the time the official ballots are required to be printed, the name of the nominee declared by the party executive committee shall be printed on the official ballots as the party nominee, but the contest or complaint shall not thereby be dismissed but the cause shall nevertheless proceed to final judgment and if the judgment is in favor of the contestant, the election of the contestee shall thereby be vacated and the Governor, or the Lieutenant Governor, in case the Governor is a party to the contest, shall call a special election for the office or offices involved. If the contestee has already entered upon the term he shall vacate the office upon the qualification of the person elected at the special election, and may be removed by quo warranto if he fail so to do.

**HISTORY:**

Derived from 1972 Code § 23-3-55 [Codes, 1942, § 3187; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, § 333]; en, Laws, 1986, ch. 495, § 288; Laws, 2012, ch. 476, § 4, eff September 17, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

By letter dated September 17, 2012, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Chapter 476, Laws of 2012.

**Cross References —**

Attendance of election commissioners at hearings which have been transferred pursuant to this section, see § 23-15-935.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2. Authority of governor.
3.-5. [Reserved for future use.]
6. Under former Section 23-3-55.

**1. In general.**

In a case in which there were irregularities in the absentee ballots in the primary election for county sheriff so that neither candidate, which included the incumbent, had a majority, but the incumbent won the general election, the governor's writ of election ordering a special primary runoff election to determine the winner and after the primary was decided a new general election violated Miss. Code Ann. § 23-15-937. Under that statute, only one special election was to be held after the general election has already occurred. Thompson v. Jones, 17 So. 3d 524, 2008 Miss. LEXIS 704 (Miss. 2008).

Special tribunal erred in ordering a special primary run-off election to be held when it was statutorily mandated that the Governor call such election. Moore v. Parker, 962 So. 2d 558, 2007 Miss. LEXIS 476 (Miss. 2007).

Where candidate one prevailed in an action contesting the results of a primary election and candidate two, who had run unopposed in the general election, had already taken office, Miss. Code Ann. § 23-15-937 required that a special election be conducted; the court had no discretion to hold that a special election was not required. The court overruled the case of Hatcher v. Fleeman, 617 So. 2d 634 (Miss. 1993), to the limited extent that the court erroneously held there that a special election was not required. Smith v. Hollins, 905 So. 2d 1267, 2005 Miss. LEXIS 388 (Miss. 2005).

Special election was required under Miss. Code Ann. § 23-15-937 where the trial court erred in its calculation of votes for two candidates for supervisor in a State election, and the unofficial winner was to have remained in office until the results of the special election were certified. Smith v. Hollins, 2004 Miss. LEXIS 1454 (Miss. Dec. 9, 2004), op. withdrawn, sub. op., 905 So. 2d 1267, 2005 Miss. LEXIS 388 (Miss. 2005).

A special election was not warranted after the disqualification of 2 ballots by a special judge in an election contest hearing, even though the disqualification changed the result of the election, the election contest hearing was not held in the county where the dispute originated, the election commissioners were not issued subpoenas, and the originally successful candidate claimed he was not given reasonable notice of the hearing, where the 2 disqualified "affidavit" ballots were not in compliance with § 23-15-573 and were therefore illegal. Hatcher v. Fleeman, 617 So. 2d 634, 1993 Miss. LEXIS 149 (Miss. 1993), overruled in part, Smith v. Hollins, 905 So. 2d 1267, 2005 Miss. LEXIS 388 (Miss. 2005).

**2. Authority of governor.**

Trial court erred in ordering a special primary run-off election to be held because the governor was statutorily mandated to call such election. Glenn v. Powell, 149 So. 3d 480, 2014 Miss. LEXIS 516 (Miss. 2014).

**3.-5. [Reserved for future use.]**

**6. Under former Section 23-3-55.**

Where a successful challenge to a primary election did not reach the Supreme Court in time to have a primary election to determine the party's nominee prior to the general election, a special election for the office involved must be held. Clark v. Rankin County Democratic Executive Committee, 322 So. 2d 753, 1975 Miss. LEXIS 1548 (Miss. 1975).

The person dissatisfied with the executive committee's decision as to the result of a primary election and seeking by means of a special tribunal to set aside the committee's findings has the burden of proof. Francis v. Sisk, 205 So. 2d 254, 1967 Miss. LEXIS 1229 (Miss. 1967).

It cannot be validly asserted, even inferentially, that this section [Code 1942, § 3187], or any other section, contemplates that the original canvass of election results of the executive committee shall be reinstated merely by filing a petition for judicial review. Francis v. Sisk, 205 So. 2d 254, 1967 Miss. LEXIS 1229 (Miss. 1967).

The decision of a county democratic executive committee rendered as the result of an election contest shall stand as the true results of the primary election unless and until superseded by a special tribunal, and it is to this decision that the presumption of correctness attaches. Francis v. Sisk, 205 So. 2d 254, 1967 Miss. LEXIS 1229 (Miss. 1967).

The phrase "special election" is clearly intended to mean a special election in the usual sense of that term, and not a party primary. Blakeney v. Mayfield, 226 Miss. 53, 83 So. 2d 748, 1955 Miss. LEXIS 606 (Miss. 1955).

Under this section [Code 1942, § 3187] a party primary after the general election is not contemplated, before the calling of a special election, at least as to state, district and county offices. Blakeney v. Mayfield, 226 Miss. 53, 83 So. 2d 748, 1955 Miss. LEXIS 606 (Miss. 1955).

Where a special court improvidently granted a stay of the special primary election which it had ordered, no party nominee was selected for the office of supervisor and the general election was already held before Supreme Court's decision on appeal from judgments of the special court, a special election must be called and held. Blakeney v. Mayfield, 226 Miss. 53, 83 So. 2d 748, 1955 Miss. LEXIS 606 (Miss. 1955).

This section [Code 1942, § 3187] is applicable where contestee's nomination at second primary was adjudged invalid so that subsequent election of contestee in November election was void. Smith v. Deere, 195 Miss. 502, 16 So. 2d 33, 1943 Miss. LEXIS 181 (Miss. 1943).

Although the statute provides for expedition in contest proceedings with the view of pleading the contest in time for the general election, if that can be done, this section provides that the contest shall not thereby be dismissed but proceed to final judgment, and if the judgment is in favor of the contestant, the election of the contestee shall thereby be vacated and the governor shall call a special election to the office involved, and if the contestee has already entered upon the term, he shall vacate the office upon the qualification of the person elected at such special election and may be removed by quo warranto if he fails to do so. Smith v. Deere, 195 Miss. 502, 16 So. 2d 33, 1943 Miss. LEXIS 181 (Miss. 1943).

## RESEARCH REFERENCES

**ALR.**

Admissibility of parol evidence of election officials to impeach election returns. 46 A.L.R.2d 1385.

State court jurisdiction over contest involving primary election for member of Congress. 68 A.L.R.2d 1320.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 393-439.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 112-114 (election contest).

**CJS.**

29 C.J.S., Elections §§ 424, 425, 509-516.

## § 23-15-939. Payment of traveling expenses of judge or chancellor; compensation of election commissioners.

The reasonable traveling expenses of the judge or chancellor shall be paid by order of the board of supervisors of the county or counties in which a contest or complaint is heard, upon an itemized certificate thereof by the judge or chancellor. The election commissioners shall be compensated for their services rendered under this section as is provided in Section 23-15-227.

**HISTORY:**

Derived from 1972 Code § 23-3-57 [Codes, 1942, § 3188; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, § 333]; en, Laws, 1986, ch.

495, § 289; Laws, 2012, ch. 476, § 5; Laws, 2017, ch. 441, § 155, eff from and after July 1, 2017.

**Editor's Notes —**

By letter dated September 17, 2012, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Chapter 476, Laws of 2012.

**Amendment Notes —**

The 2017 amendment inserted "or chancellor" twice.

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections § 438.

**CJS.**

29 C.J.S., Elections § 539.

## § 23-15-941. Willful violation of election statute constituting criminal offense; issuance of arrest warrant; delivery of papers to grand jury foreman.

If upon the hearing of a primary election contest or complaint, under Section 23-15-931, it shall distinctly appear to the trial judge that any person, including a candidate or election officer, has willfully and corruptly violated any primary election statute and such violation is by said statute made a criminal offense, whether a misdemeanor or a felony, it shall be the duty of the trial judge to issue immediately his warrant for the arrest of the guilty party, reciting in his order therefor, in brief, the grounds or causes for the arrest. Such warrant and a certified copy of the order shall be forthwith placed in the hands of the sheriff of the county wherein the offense occurred, and the sheriff shall at once, upon receipt of the warrant, arrest the party and commit him to prison, unless and until the party give bond in the sum of Five Hundred Dollars ($500.00) with two (2) or more good and sufficient sureties conditioned for his appearance at the next term of the circuit court and from term to term until discharged by law. When the arrest has been made and the bond, if any, given, the sheriff shall deliver all the papers therein with his return thereon to the circuit clerk who shall file, and thereafter personally deliver, the same to the foreman of the next grand jury.

**HISTORY:**

Derived from 1972 Code § 23-3-59 [Codes, 1942, § 3189; Laws, 1935, ch. 19; Laws, 1983, ch. 499, § 23; repealed by Laws, 1986, ch. 495, § 333]; en, Laws, 1986, ch. 495, § 290, eff from and after January 1, 1987.

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 348-350, 359, 445-477.

**CJS.**

29 C.J.S., Elections §§ 575, 576, 578–583.

**Lawyers' Edition.**

Violation of election laws as "infamous crime" which must be prosecuted by presentment or indictment of grand jury under Fifth Amendment. 2 L. Ed. 2d 1960.

# SUBARTICLE C.

# CONTESTS OF OTHER ELECTIONS.

Sec.
23-15-951. Filing of petition; designation of judges to hear election contests; trial by, and verdict of, jury; assumption of office.
23-15-953. Proceedings with respect to petition filed more than forty days before term of circuit court next after contested election.
23-15-955. Proceedings with respect to election of member of Senate or House of Representatives.
23-15-957. Power to compel attendance of witnesses and production of documents.

## § 23-15-951. Filing of petition; designation of judges to hear election contests; trial by, and verdict of, jury; assumption of office.

Except as otherwise provided by Section 23-15-955 or 23-15-961, a person desiring to contest the election of another person returned as elected to any office within any county, may, within twenty (20) days after the election, file a petition in the office of the clerk of the circuit court of the county, setting forth the grounds upon which the election is contested. When such a petition is filed, the circuit clerk shall immediately notify, by registered letter, telegraph, telephone, or personally the Chief Justice of the Supreme Court or in his absence, or disability, some other Justice of the Supreme Court, who shall forthwith designate and notify a circuit judge or chancellor of a district other than that which embraces the district, subdistrict, county or any of the counties, involved in the contest or complaint, to proceed to the county in which the contest or complaint has been filed to hear and determine the contest or complaint. The circuit clerk shall also cause a copy of such petition to be served upon the contestee, which shall serve as notice to such contestee.

The Supreme Court shall compile a list of judges throughout the state to hear such disputes before an election. It shall be the official duty of the designated circuit judge or chancellor to proceed to discharge the duty of hearing the contest at the earliest possible date. The date of the contest shall be fixed by the judge or chancellor, and the judge or chancellor shall provide reasonable notice to the contestant and the contestee of the date and time fixed for the contest. The judge or chancellor shall cause the contestant and contestee to be served in a reasonable manner. When the contestee is served, such contestee shall promptly file his answer, and cross-complaint, if the contestee has a cross-complaint.

The court shall, at the first term, cause an issue to be made up and tried by a jury, and the verdict of the jury shall find the person having the greatest number of legal votes at the election. If the jury shall find against the person returned elected, the clerk shall issue a certificate thereof; and the person in whose favor the jury shall find shall be commissioned by the Governor, and shall qualify and enter upon the duties of his office. Each party shall be allowed ten (10) peremptory challenges, and new trials shall be granted and costs awarded as in other cases. In case the election of district attorney or other state district election be contested, the petition may be filed in any county of the district or in any county of an adjoining district within twenty (20) days after the election, and like proceedings shall be had thereon as in the case of county officers, and the person found to be entitled to the office shall qualify as required by law and enter upon the duties of his office.

A person desiring to contest the election of another person returned as elected to any seat in the Mississippi Legislature shall comply with the provisions of Section 23-15-955. A person desiring to contest the qualifications of a candidate for nomination in a political party primary election shall comply with the provisions of Section 23-15-961.

**HISTORY:**

Derived from 1972 Code § 23-5-187 [Codes, Hutchinson's 1848, ch. 7, art 7 (1); 1857, ch. 4, art 23; 1871, § 391; 1880, § 150; 1892, § 3679; 1906, § 4186; Hemingway's 1917, § 6820; 1930, § 6258; 1942, § 3287; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 291; Laws, 1988, ch. 577, § 5; Laws, 1999, ch. 301, § 13; Laws, 2000, ch. 450, § 1; Laws, 2013, ch. 432, § 1, eff October 22, 2013 (the date of the United States Attorney General's response to the submission of this section under Section 5 of the Voting Rights Act of 1965).

**Editor's Notes —**

Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 301, § 13.

On August 7, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 450.

The effective date of Chapter 432, Laws of 2013, which amended this section, is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bill was approved, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. For that reason, the Mississippi Attorney General's Office submitted Chapter 432, Laws of 2013, to the United States Attorney General, in order to technically meet the requirements of Section 5 and fulfill the condition in the effective date of the bill, which will allow the bill to take effect.

By letter dated October 22, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 432 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 432, so Chapter 432 became effective from and after October 22, 2013, the date of the United States Attorney General's response letter.

**Cross References —**

Judges listed and selected to hear election disputes, as provided in this section, to be available on election day to immediately hear and resolve election day disputes, see § 23-15-913.

## JUDICIAL DECISIONS

### ANALYSIS

1. In general.
2-5. [Reserved for future use.]
6. Under former Section 23-5-187.

**1. In general.**

Circuit court properly found that mail-in absentee ballots that did not comply with Miss. Code Ann. § 23-15-635(1) were illegal since strict compliance was necessary; however, once it found that a losing candidate received the greatest number of legal votes, it was error to order a special election instead of utilizing Miss. Code Ann. § 23-15-951. Ruhl v. Walton, 955 So. 2d 279, 2007 Miss. LEXIS 186 (Miss. 2007).

Miss. Code Ann. § 23-15-951 (2001) was the proper statute for the trial court to apply in an appeal by the losing candidate for county election commissioner, who successfully alleged that the winning candidate was disqualified on the grounds of his residency in the wrong county. McIntosh v. Sanders, 831 So. 2d 1111, 2002 Miss. LEXIS 400 (Miss. 2002).

House of Representatives had jurisdiction to conduct proceedings in which it interviewed election commission and heard from candidates in disputed election for House seat; while statute allowed challenger to file petitions in circuit court, statute also gives legislature, or committee appointed to investigate facts concerning election of member, power to compel witness testimony and production of documents relating to investigation. Esco v. Blackmon, 692 So. 2d 74, 1997 Miss. LEXIS 156 (Miss. 1997).

While statute permits jury to be empaneled to decide issues in election contest, it does not mandate full trial of all issues before jury. Esco v. Blackmon, 692 So. 2d 74, 1997 Miss. LEXIS 156 (Miss. 1997).

A trial court properly ruled as a matter of law on an issue pertaining to the propriety of a town clerk's hand-delivery of 3 absentee ballots to her able-bodied relatives; while § 23-15-951 permits a jury to be impaneled to decide issues in an election contest, it does not mandate a full trial of all issues before a jury. Lewis v. Griffith, 664 So. 2d 177, 1995 Miss. LEXIS 450 (Miss. 1995).

Section 23-15-951 is the exclusive remedy for deciding election contest issues, of which the legality of votes cast is one, and, therefore, it would have been inappropriate to decide by declaratory judgment how to legally count affidavit ballots because that issue would not become ripe for judicial resolution until a statutory election contest was commenced following the election commission's certification. The initial determination of whether to accept or reject ballots in an election is statutorily lodged with the election commission; with the exception of remedial writs in aid of future jurisdiction, the judiciary is compelled to stay its hand until an election contest is filed in accordance with the statute. In re Wilbourn, 590 So. 2d 1381, 1991 Miss. LEXIS 835 (Miss. 1991).

**2-5. [Reserved for future use.]**

**6. Under former Section 23-5-187.**

Although ballots are controlling as primary evidence where their proponent affirmatively demonstrates that the integrity of the ballot box has been maintained inviolate, where the parties stipulate into evidence what would otherwise be both primary and secondary proof, the presumption of correctness of the results certified by the election commissioners prevails unless the jury finds the presumption overcome by some plausible explanation of the discrepancy. Thus, in a contest challenging the election of one candidate to a county board of education, the trial court properly upheld the election on the basis of tally sheets as enclosed in the ballot box, despite a discrepancy between the sheets and the actual ballot count, where the ballots and tally sheets were introduced into evidence by stipulation of the parties and where no explanation was offered by either of the parties for the discrepancy. Blakeney v. Hawkins, 384 So. 2d 1035, 1980 Miss. LEXIS 2007 (Miss. 1980).

The only proper defendant in an election contest under this section [Code 1972, § 23-5-187, Repealed.] is the successful party in the election, and election commissioners who were improperly joined as defendants in the election contest had no such beneficial interest in the outcome of the election as would give them a right to appeal from a judgment voiding the election. Fisher v. Crowe, 303 So. 2d 474, 1974 Miss. LEXIS 1442 (Miss. 1974).

In an action contesting an election, voters legally entitled to vote cannot be required to tell for whom they voted. Hubbard v. McKey, 193 So. 2d 129, 1966 Miss. LEXIS 1277 (Miss. 1966).

In an action contesting an election, a voter cannot be compelled to disclose how he voted if the legality of the vote is in doubt. Hubbard v. McKey, 193 So. 2d 129, 1966 Miss. LEXIS 1277 (Miss. 1966).

In an action contesting an election, the presumption of the legality of a vote must be overcome by affirmative proof before the voter can be required to tell for whom he voted. Hubbard v. McKey, 193 So. 2d 129, 1966 Miss. LEXIS 1277 (Miss. 1966).

One contesting an election has the burden of proof to show that voters were disqualified, and how they voted. Hubbard v. McKey, 193 So. 2d 129, 1966 Miss. LEXIS 1277 (Miss. 1966).

The power of the circuit court to issue a writ of mandamus to the circuit clerk to permit inspection of the ballot boxes is necessary, supplemental to and in support of the statutory right of candidate to contest a general or special election. Lopez v. Holleman, 219 Miss. 822, 69 So. 2d 903, 1954 Miss. LEXIS 392 (Miss. 1954).

Section which gives any candidate in a primary election contest a right to have full examination of ballot boxes at any time within twelve days after the canvass by the executive committee is in pari materia with this section [Code 1942, § 3287], in that it is indicative of a general policy of the state on a cognate subject matter to allow contesting candidates the right to obtain the facts concerning an election precedent to filing a contest. Lopez v. Holleman, 219 Miss. 822, 69 So. 2d 903, 1954 Miss. LEXIS 392 (Miss. 1954).

This section [Code 1942, § 3287] provides an exclusive remedy for one who contests the manner or results of an election. State ex rel. Livingston v. Bounds, 212 Miss. 184, 54 So. 2d 276, 1951 Miss. LEXIS 442 (Miss. 1951).

When an election contestee pleads an affirmative defense he must set forth the grounds upon which his defense rests. Simmons v. Crisler, 197 Miss. 547, 20 So. 2d 85, 1944 Miss. LEXIS 319 (Miss. 1944).

Election contestee's plea that votes of named individuals were invalid because they had not paid their poll taxes as required by § 241 of the Constitution was insufficient, even assuming that failure to have paid their poll taxes disqualified such voters, where the plea failed to set forth for whom alleged illegal votes were cast, so that trial court committed no error in striking therefrom all allegations relative thereto, and contestee would not be permitted to amend his plea where he stated therein that he did not know and could not ascertain for whom alleged illegal votes were cast until proof thereof was made at the trial. Simmons v. Crisler, 197 Miss. 547, 20 So. 2d 85, 1944 Miss. LEXIS 319 (Miss. 1944).

This section [Code 1942, § 3287] limits the right to contest in the person or persons who were candidates in the election, and does not give a taxpayer or qualified elector the right to contest the election of a county officer. Jones v. Election Comm'rs of Hancock County, 187 Miss. 636, 193 So. 3, 1940 Miss. LEXIS 215 (Miss. 1940).

This section [Code 1942, § 3287] does not authorize a taxpayer or qualified elector to contest an election abolishing the office of county attorney. Jones v. Election Comm'rs of Hancock County, 187 Miss. 636, 193 So. 3, 1940 Miss. LEXIS 215 (Miss. 1940).

One who contested the election of another to a municipal office because of his illegal nomination in the primary, who made no claim to have been elected himself, was not entitled to contest the election, the proper remedy in such case being quo warranto, since the question is a public and not a private one. Omar v. West, 186 Miss. 136, 188 So. 917, 1939 Miss. LEXIS 196 (Miss. 1939).

That contestee was disqualified from holding office did not affect legality of votes cast for him. May v. Young, 164 Miss. 35, 143 So. 703, 1932 Miss. LEXIS 220 (Miss. 1932).

As respects remedy by quo warranto, declaration of election commissioners that certain person received majority of legal votes cast at election and was duly elected could be contested only in accordance with statute providing for election contest. Warren v. State, 163 Miss. 817, 141 So. 901, 1932 Miss. LEXIS 90 (Miss. 1932).

Judgment in election contest over office of county superintendent, in view of issues determined, held not res judicata, in subsequent quo warranto proceeding, of issue involving contestant's removal from State. Weisinger v. McGehee, 160 Miss. 424, 134 So. 148, 1931 Miss. LEXIS 186 (Miss. 1931).

Writ of certiorari could not issue against county election commissioners, where it was sought to conduct in circuit court a contest of election. Board of Supervisors v. Stephenson, 130 So. 684 (Miss.), rev'd, 160 Miss. 372, 134 So. 142, 1931 Miss. LEXIS 182 (Miss. 1930).

Refusal of continuance in election contest held not to require reversal without showing that such refusal denied substantial rights. Tonnar v. Wade, 153 Miss. 722, 121 So. 156, 1929 Miss. LEXIS 56 (Miss. 1929).

One claiming commissioner erred in counting votes, and that he should have been inducted into office, cannot bring quo warranto under this section [Code 1942, § 3287]. Loposser v. State, 110 Miss. 240, 70 So. 345, 1915 Miss. LEXIS 30 (Miss. 1915).

In a contest for a county office it may be shown by the contestant that he was deprived of his rightful majority by the fraudulent practice of the managers at certain precincts in returning a greater number of votes than were actually cast, and receiving votes of persons not qualified electors, and votes which had been marked and furnished to voters by others in disregard of the constitution. Sproule v. Fredericks, 69 Miss. 898, 11 So. 472, 1892 Miss. LEXIS 10 (Miss. 1892).

Elections to municipal offices are not embraced herein. Easly v. Badenhausen, 59 Miss. 580, 1882 Miss. LEXIS 165 (Miss. 1882).

The filing of the petition gives the court jurisdiction of the contest, and the failure to issue the summons at once does not authorize the quashing of the proceedings. Hall v. Lyon, 59 Miss. 218, 1881 Miss. LEXIS 107 (Miss. 1881).

### OPINIONS OF THE ATTORNEY GENERAL

Although municipal governing authorities should not pay for legal costs incurred by a winning candidate or that candidate's party when an election is challenged, they may employ attorneys to represent the municipality's interest in upholding the validity of a general municipal election. 1997 Miss. Op. Att'y Gen. 469.

Certain amendments to this section (enacted by H..B. 1537 [2000]), addressing contesting elections to legislative seats, have been precleared and are enforceable. However, the return to the practice of allowing a local judge hear election contests without the benefit of the appointment of a judge from outside the district has not been precleared, and thus, that portion of of this section is unenforceable. 2004 Miss. Op. Att'y Gen. 443.

### RESEARCH REFERENCES

**ALR.**

State court jurisdiction over contest involving primary election for member of Congress. 68 A.L.R.2d 1320.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 398-414.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 101-106 (election contests).

**CJS.**

29 C.J.S., Elections §§ 442-508.

## § 23-15-953. Proceedings with respect to petition filed more than forty days before term of circuit court next after contested election.

If the petition shall be filed more than forty (40) days before the term of the circuit court next after the election which is contested, the summons may be made returnable, and a trial of the issue be had in vacation, in the manner prescribed for a trial in vacation of an information in the nature of a quo warranto; and all of the provisions in reference to a trial in vacation of such proceedings shall apply to the trial of issues as to contested elections in the state of case herein mentioned; but this section shall not be held to include a contest of the election of a justice court judge, constable, coroner, surveyor, or member of a board of supervisors.

**HISTORY:**

Derived from 1972 Code § 23-5-189 [Codes, 1880, § 151; 1892, § 3680; 1906, § 4187; Hemingway's 1917, § 6821; 1930, § 6259; 1942, § 3288; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 292, eff from and after January 1, 1987.

### JUDICIAL DECISIONS

#### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-5-189.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-5-189.**

Writ of certiorari could not issue against county election commissioners, where it was sought to conduct in circuit court a contest of election. Board of Supervisors v. Stephenson, 130 So. 684 (Miss.), rev'd, 160 Miss. 372, 134 So. 142, 1931 Miss. LEXIS 182 (Miss. 1930).

An appeal will lie from a judgment rendered in vacation, the proceeding being likened to that of quo warranto. Perkins v. Carraway, 59 Miss. 222, 1881 Miss. LEXIS 108 (Miss. 1881).

### RESEARCH REFERENCES

**ALR.**

Admissibility of parol evidence of election officials to impeach election returns. 46 A.L.R.2d 1385.

State court jurisdiction over contest involving primary election for member of Congress. 68 A.L.R.2d 1320.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 410-427.

**CJS.**

29 C.J.S., Elections §§ 442-512.

## § 23-15-955. Proceedings with respect to election of member of Senate or House of Representatives.

Except as otherwise provided by Section 23-15-961, the person contesting the seat of any member of the Senate or House of Representatives shall comply with the provisions of this section. Section 38, Mississippi Constitution of 1890, provides that each house of the Mississippi State Legislature shall judge the qualifications, return and election of its membership. Pursuant to that authority, the House of Representatives shall have exclusive jurisdiction over an election contest regarding the seat of any member of the House of Representatives, and the Senate shall have exclusive jurisdiction over an election contest regarding the seat of any member of the Senate. An election contest regarding the seat of a member of the House of Representatives or the Senate shall be filed with the Clerk of the House or the Secretary of the Senate, as the case may be, within thirty (30) days after a regular general election or ten (10) days after a special election to fill a vacancy. The legislative resolution of the election contest shall be conducted in accordance with procedures and precedents established by the House of Representatives or the Senate, as the case may be. Such procedures and precedents may be found in the Journals of the House of Representatives and of the State Senate and/or in the published Rules of the House of Representatives and of the State Senate.

**HISTORY:**

Derived from 1972 Code § 23-5-191 [Codes, 1857, ch. 4, art 21; 1871, § 389; 1880, § 148; 1892, § 3677; 1906, § 4184; Hemingway's 1917, § 6818; 1930, § 6260; 1942, § 3289; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 293; Laws, 1988, ch. 577, § 6; Laws, 2000, ch. 450, § 2, eff from and after August 7, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

**Editor's Notes —**

On August 7, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 450.

### JUDICIAL DECISIONS

**1. In general.**

Because the election at issue specifically concerned a party primary election, the case was brought squarely within the purview of the more specific Miss. Const. art. 12, § 247, wherein the people directed the Legislature to enact laws to secure fairness in party primary elections; the adoption of Miss. Code Ann. §§ 23-15-955 and 23-15-927 is clear support for the distinction. Dillon v. Myers, 227 So. 3d 923, 2017 Miss. LEXIS 134 (Miss. 2017).

Statute governing proceedings with respect to election of member of legislature does not provide for legislature to elect its own members, but rather merely allows legislature to examine elective process after winner is certified to determine if illegal or corrupt practices have taken place, and does not violate provision of State Constitution under which legislature may not elect any other than its own officers and state librarian. Esco v. Blackmon, 692 So. 2d 74, 1997 Miss. LEXIS 156 (Miss. 1997).

RESEARCH REFERENCES

**ALR.**

Admissibility of parol evidence of election officials to impeach election returns. 46 A.L.R.2d 1385.

State court jurisdiction over contest involving primary election for member of Congress. 68 A.L.R.2d 1320.

**Am. Jur.**

26 Am. Jur. 2d, Elections § 401.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 101-103 (election contests).

**CJS.**

29 C.J.S., Elections §§ 426-429, 505-508.

### § 23-15-957. Power to compel attendance of witnesses and production of documents.

Each house of the Legislature, the Clerk of the House of Representatives, the Secretary of the Senate, or any committee appointed to investigate the facts concerning the election or qualifications of any member or persons claimed to be such, shall have power to issue subpoenas and compel the attendance of witnesses and the production of such documents or papers as may be required. In addition, the clerk or the secretary, as the case may be, shall have the authority to enforce any subpoena issued by him or her and to enforce compliance with the time limitations set forth in Section 23-15-955 or in any internal procedure or precedent of the respective house of the State Legislature.

**HISTORY:**

Derived from 1972 Code § 23-5-193 [Codes, Hutchinson's 1848, ch. 7, art 5 (20); 1857, ch. 4, art 20; 1871, § 388; 1880, § 147; 1892, § 3678; 1906, § 4185; Hemingway's 1917, § 6819; 1930, § 6261; 1942, § 3290; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 294; Laws, 2000, ch. 450, § 3, eff from and after August 7, 2000 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).

**Editor's Notes —**

On August 7, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 450.

RESEARCH REFERENCES

**ALR.**

Admissibility of parol evidence of election officials to impeach election returns. 46 A.L.R.2d 1385.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 399, 400.

**Lawyers' Edition.**

Federal court's power to determine election or qualifications of member of legislative body. 17 L. Ed. 2d 911.

## SUBARTICLE D.

## CONTESTS OF QUALIFICATIONS OF CANDIDATES.

Sec.
23-15-961. Exclusive procedures for contesting qualifications of candidate for primary election; exceptions.

Sec.
23-15-963. Exclusive procedures for contesting qualifications of candidate for general election; exceptions.

## § 23-15-961. Exclusive procedures for contesting qualifications of candidate for primary election; exceptions.

(1) Any person desiring to contest the qualifications of another person as a candidate for nomination in a political party primary election shall file a petition specifically setting forth the grounds of the challenge within ten (10) days after the qualifying deadline for the office in question. The petition shall be filed with the executive committee with whom the candidate in question qualified.

(2) Within ten (10) days of receipt of the petition described in subsection (1) of this section, the appropriate executive committee shall meet and rule upon the petition. At least two (2) days before the hearing to consider the petition, the appropriate executive committee shall give notice to both the petitioner and the contested candidate of the time and place of the hearing on the petition. Each party shall be given an opportunity to be heard at that meeting and present evidence in support of his position.

(3) If the appropriate executive committee fails to rule upon the petition within the time required in subsection (2) of this section, that inaction shall be interpreted as a denial of the request for relief contained in the petition.

(4) Any party aggrieved by the action or inaction of the appropriate executive committee may file a petition for judicial review to the circuit court of the county in which the executive committee whose decision is being reviewed sits. The petition must be filed no later than fifteen (15) days after the date the petition was originally filed with the appropriate executive committee. The person filing for judicial review shall give a cost bond in the sum of Three Hundred Dollars ($300.00) with two (2) or more sufficient sureties conditioned to pay all costs in case his petition be dismissed, and an additional bond may be required, by the court, if necessary, at any subsequent stage of the proceedings.

(5) Upon the filing of the petition and bond, the circuit clerk shall immediately, by registered letter or by telegraph or by telephone, or personally, notify the Chief Justice of the Supreme Court, or in his absence, or disability, some other judge of the Supreme Court, who shall forthwith designate and notify a circuit judge or retired judge on senior status of a district other than that which embraces the district, subdistrict, county or any of the counties, involved in the contest or complaint, to proceed to the county in which the contest or complaint has been filed to hear and determine the contest or complaint. It shall be the official duty of the trial judge to proceed to the discharge of the designated duty at the earliest possible date to be fixed by the judge and of which the contestant and contestee shall have reasonable notice. The contestant and contestee are to be served in a reasonable manner as the judge may direct, in response to which notice the contestee shall promptly file his answer, and also his cross-complaint if he has a cross-complaint. The

hearing before the trial court shall be de novo. The matter shall be tried to the trial judge, without a jury. After hearing the evidence, the trial judge shall determine whether the candidate whose qualifications have been challenged is legally qualified to have his name placed upon the ballot in question. The trial judge may, upon disqualification of any such candidate, order that such candidate shall bear the court costs of the proceedings.

(6) Within three (3) days after judgment is rendered by the circuit court, the contestant or contestee, or both, may file an appeal in the Supreme Court upon giving a cost bond in the sum of Three Hundred Dollars ($300.00), together with a bill of exceptions which shall state the point or points of law at issue with a sufficient synopsis of the facts to fully disclose the bearing and relevancy of such points of law. The bill of exceptions shall be signed by the trial judge, or in case of his absence, refusal or disability, by two (2) disinterested attorneys, as is provided by law in other cases of bills of exception. The filing of such appeals shall automatically suspend the decision of the circuit court and the appropriate executive committee is entitled to proceed based upon their decision unless and until the Supreme Court, in its discretion, stays further proceedings in the matter. The appeal shall be immediately docketed in the Supreme Court and referred to the court en banc upon briefs without oral argument unless the court shall call for oral argument, and shall be decided at the earliest possible date, as a preference case over all others. The Supreme Court shall have the authority to grant such relief as is appropriate under the circumstances.

(7) The procedure set forth in this section shall be the sole and only manner in which the qualifications of a candidate seeking public office as a party nominee may be challenged prior to the time of his nomination or election. After a party nominee has been elected to public office, the election may be challenged as otherwise provided by law. After a party nominee assumes an elective office, his qualifications to hold that office may be contested as otherwise provided by law.

**HISTORY:**

Derived from 1942 Code § 3151 [Codes, Hemingway's 1917, § 6431; 1930, § 5904; Laws, 1916, ch. 161; repealed by Laws, 1970, ch. 506, § 33 and 1986, ch. 495, § 346]; en, Laws, 1988, ch. 577, § 1; Laws, 1990, ch. 307, § 1; Laws, 1999, ch. 301, § 14; Laws, 2012, ch. 476, § 6, eff September 17, 2012 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 301, § 14.

By letter dated September 17, 2012, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Chapter 476, Laws of 2012.

## JUDICIAL DECISIONS

### ANALYSIS

1. Timeliness.
2. Relation to other laws.
3. Judicial authority.

**1. Timeliness.**

Where an incumbent candidate filed his petition challenging the qualifications of the successful Democratic primary candidate, but filed the petition pursuant to Miss. Code Ann. § 23-15-963 and not Miss. Code Ann. § 23-15-961, the petition was denied as untimely, as it was not filed within 10 days of the successful candidate winning the Democratic primary. Gourlay v. Williams, 874 So. 2d 987, 2004 Miss. LEXIS 649 (Miss. 2004).

**2. Relation to other laws.**

Supreme Court did not have the authority to order a special election, given that no election contest had been filed, and the original appeal under this section was not prosecuted. Tunica Cty. Democratic Exec. v. Jones, 233 So. 3d 792, 2017 Miss. LEXIS 246 (Miss. 2017).

Black chairman of a county political party executive committee was guilty of racial discrimination under § 2 of the Voting Rights Act because, inter alia, he sabotaged a white party incumbent's participation in the executive committee's nomination process in order to replace him on the primary ballot with a black candidate rather than properly challenging his qualifications as provided in Miss. Code Ann. § 23-15-961. United States v. Brown, 494 F. Supp. 2d 440, 2007 U.S. Dist. LEXIS 47255 (S.D. Miss. 2007), aff'd, 561 F.3d 420, 2009 U.S. App. LEXIS 4030 (5th Cir. Miss. 2009).

**3. Judicial authority.**

In a case in which a political party's executive committee decided that a candidate for a position on the county board of supervisors was not qualified to run in the primary election and kept the candidate's name off the primary ballot, the circuit court had no authority to order a special election under Miss. Code Ann. § 23-15-961. It appeared that the circuit court's second and third orders went beyond the circuit court's authority under the statute and the judge's authority under his appointment by the Supreme Court. Tunica Cty. Democratic Exec. v. Jones, 233 So. 3d 792, 2017 Miss. LEXIS 246 (Miss. 2017).

Supreme Court did not have the authority to order a special election, given that no election contest had been filed, and the original appeal under this section was not prosecuted. Tunica Cty. Democratic Exec. v. Jones, 233 So. 3d 792, 2017 Miss. LEXIS 246 (Miss. 2017).

## RESEARCH REFERENCES

**ALR.**

State court jurisdiction over contest involving primary election for member of Congress. 68 A.L.R.2d 1320.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 381, 382, 384, 385 et seq.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 101-106 (election contests).

**CJS.**

29 C.J.S., Elections §§ 403 et seq.

## § 23-15-963. Exclusive procedures for contesting qualifications of candidate for general election; exceptions.

(1) Any person desiring to contest the qualifications of another person who has qualified pursuant to the provisions of Section 23-15-359, Mississippi Code of 1972, as a candidate for any office elected at a general election, shall file a petition specifically setting forth the grounds of the challenge not later than thirty-one (31) days after the date of the first primary election set forth in Section 23-15-191, Mississippi Code of 1972. Such petition shall be filed with the same body with whom the candidate in question qualified pursuant to Section 23-15-359, Mississippi Code of 1972.

(2) Any person desiring to contest the qualifications of another person who has qualified pursuant to the provisions of Section 23-15-213, Mississippi

Code of 1972, as a candidate for county election commissioner elected at a general election, shall file a petition specifically setting forth the grounds of the challenge no later than sixty (60) days prior to the general election. Such petition shall be filed with the county board of supervisors, being the same body with whom the candidate in question qualified pursuant to Section 23-15-213, Mississippi Code of 1972.

(3) Any person desiring to contest the qualifications of another person who has qualified pursuant to the provisions of Section 23-15-361, Mississippi Code of 1972, as a candidate for municipal office elected on the date designated by law for regular municipal elections, shall file a petition specifically setting forth the grounds of the challenge no later than thirty-one (31) days after the date of the first primary election set forth in Section 23-15-309, Mississippi Code of 1972. Such petition shall be filed with the municipal commissioners of election, being the same body with whom the candidate in question qualified pursuant to Section 23-15-361, Mississippi Code of 1972.

(4) Within ten (10) days of receipt of the petition described in subsections (1), (2) and (3) of this section, the appropriate election officials shall meet and rule upon the petition. At least two (2) days before the hearing to consider the petition, the appropriate election officials shall give notice to both the petitioner and the contested candidate of the time and place of the hearing on the petition. Each party shall be given an opportunity to be heard at such meeting and present evidence in support of his position.

(5) If the appropriate election officials fail to rule upon the petition within the time required above, such inaction shall be interpreted as a denial of the request for relief contained in the petition.

(6) Any party aggrieved by the action or inaction of the appropriate election officials may file a petition for judicial review to the circuit court of the county in which the election officials whose decision is being reviewed sits. Such petition must be filed no later than fifteen (15) days after the date the petition was originally filed with the appropriate election officials. Such person filing for judicial review shall give a cost bond in the sum of Three Hundred Dollars ($300.00) with two (2) or more sufficient sureties conditioned to pay all costs in case his petition be dismissed, and an additional bond may be required, by the court, if necessary, at any subsequent stage of the proceedings.

(7) The circuit court with whom such a petition for judicial review has been filed shall at the earliest possible date set the matter for hearing. Notice shall be given the interested parties of the time set for hearing by the circuit clerk. The hearing before the circuit court shall be de novo. The matter shall be tried to the circuit judge, without a jury. After hearing the evidence, the circuit judge shall determine whether the candidate whose qualifications have been challenged is legally qualified to have his name placed upon the ballot in question. The circuit judge may, upon disqualification of any such candidate, order that such candidate shall bear the court costs of the proceedings.

(8) Within three (3) days after judgment is rendered by the circuit court, the contestant or contestee, or both, may file an appeal in the Supreme Court upon giving a cost bond in the sum of Three Hundred Dollars ($300.00),

together with a bill of exceptions which shall state the point or points of law at issue with a sufficient synopsis of the facts to fully disclose the bearing and relevancy of such points of law. The bill of exceptions shall be signed by the trial judge, or in case of his absence, refusal or disability, by two (2) disinterested attorneys, as is provided by law in other cases of bills of exception. The filing of such appeals shall automatically suspend the decision of the circuit court and the appropriate election officials are entitled to proceed based upon their decision unless and until the Supreme Court, in its discretion, stays further proceedings in the matter. The appeal shall be immediately docketed in the Supreme Court and referred to the court en banc upon briefs without oral argument unless the court shall call for oral argument, and shall be decided at the earliest possible date, as a preference case over all others. The Supreme Court shall have the authority to grant such relief as is appropriate under the circumstances.

(9) The procedure set forth above shall be the sole and only manner in which the qualifications of a candidate seeking public office who qualified pursuant to the provisions of Sections 23-15-359, 23-15-213 and 23-15-361, Mississippi Code of 1972, may be challenged prior to the time of his election. After any such person has been elected to public office, the election may be challenged as otherwise provided by law. After any person assumes an elective office, his qualifications to hold that office may be contested as otherwise provided by law.

**HISTORY:**

Derived from 1972 Code § 23-3-63 [Codes, 1942, § 3191; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, § 333]; en, Laws, 1988, ch. 577, § 2; Laws, 1990, ch. 307, § 2; Laws, 2013, ch. 406, § 1, eff August 1, 2013 (the date of the United States Attorney General's response to the submission of this section under Section 5 of the Voting Rights Act of 1965).

**Editor's Notes —**

The effective date of Chapter 406, Laws of 2013, which amended this section, is "from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended." However, after the bill was approved, the United States Supreme Court, in the case of *Shelby County v. Holder* (June 25, 2013), struck down the coverage formula that determined what jurisdictions are subject to Section 5 of the Voting Rights Act, so the coverage formula can no longer be used as a basis for subjecting jurisdictions to preclearance under Section 5.

Because of the *Shelby County* decision, the United States Attorney General is not making any determinations under Section 5 on voting or election changes made by states. The Supreme Court did not strike down Section 5, so it is still in effect. For that reason, the Mississippi Attorney General's Office submitted Chapter 406, Laws of 2013, to the United States Attorney General, in order to technically meet the requirements of Section 5 and fulfill the condition in the effective date of the bill, which will allow the bill to take effect.

By letter dated August 1, 2013, the United States Attorney General responded that he is not making determinations on the merits of any bill that is submitted under Section 5. The submission of Chapter 406 and the response from the United States Attorney General technically met the requirements of Section 5 and fulfilled the condition in the effective date of Chapter 406, so Chapter 406 became effective from and after August 1, 2013, the date of the United States Attorney General's response letter.

### JUDICIAL DECISIONS

#### ANALYSIS

1. In general.
2. Construction with other laws.
3. Parties.
4. Specificity of pleadings.

**1. In general.**

Statute did not apply because a candidate was not qualified for public office at a general election, as the Election Commission had disqualified him; the candidate was not contesting the qualifications of another person but was challenging his own disqualification. Basil v. Browning, 175 So. 3d 1289, 2015 Miss. LEXIS 543 (Miss. 2015).

Where an incumbent candidate filed his petition challenging the qualifications of the successful Democratic primary candidate, but filed the petition pursuant to Miss. Code Ann. § 23-15-963 and not Miss. Code Ann. § 23-15-961, the petition was denied as untimely, as it was not filed within 10 days of the successful candidate winning the Democratic primary. Gourlay v. Williams, 874 So. 2d 987, 2004 Miss. LEXIS 649 (Miss. 2004).

The statute does not require that a petition filed before the election commission be sworn or that a copy of the petition before the election commission be filed with the circuit court. Ladner v. Necaise, 771 So. 2d 353, 2000 Miss. LEXIS 228 (Miss. 2000).

**2. Construction with other laws.**

The requirement of § 1-3-75 that petitions be personally signed was properly applied to petitions filed pursuant to this section to contest the qualifications of a candidate for public office. Ladner v. Necaise, 771 So. 2d 353, 2000 Miss. LEXIS 228 (Miss. 2000).

**3. Parties.**

A plain reading of the statute is that "any person" is not restricted to mean that the person must be a candidate for the election in which he/she is contesting the qualifications of a candidate. Ladner v. Necaise, 771 So. 2d 353, 2000 Miss. LEXIS 228 (Miss. 2000).

**4. Specificity of pleadings.**

A petition met the requirement of specifically setting forth the grounds of the challenge when it stated that the candidate's petition failed for want of the requisite number of valid signatures, listed the signatures in question, and obtained as many affidavits as time and circumstance allowed showing that the allegations had merit. Ladner v. Necaise, 771 So. 2d 353, 2000 Miss. LEXIS 228 (Miss. 2000).

### OPINIONS OF THE ATTORNEY GENERAL

Because the employment a hearing officer by the county election commission to preside over an election contest convened under subsection (1) of this section did not have the statutorily required approval of the County Board of Supervisors, no compensation would be authorized. 2003 Miss. Op. Att'y Gen. 554.

### RESEARCH REFERENCES

**ALR.**

State court jurisdiction over contest involving primary election for member of Congress. 68 A.L.R.2d 1320.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 381, 382, 384, 385 et seq.

9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 101-106 (election contests).

**CJS.**

29 C.J.S., Elections §§ 403 et seq.

# ARTICLE 31.

# JUDICIAL OFFICES.

Subarticle A. General Provisions. .......... 23-15-971
Subarticle B. Supreme Court Judgeships. .......... 23-15-991
Subarticle C. Circuit Court Judges and Chancellors. .......... 23-15-1011
Subarticle D. Campaign Financing. .......... 23-15-1021

# SUBARTICLE A.

# GENERAL PROVISIONS.

Sec.
23-15-971. Repealed.
23-15-973. Opportunities for candidates to address people during court terms; restrictions with respect to political affiliations; penalties for violations.
23-15-974. Nonpartisan Judicial Election Act; short title.
23-15-975. "Judicial office" defined; positions deemed positions as full-time positions; prohibition against practice of law.
23-15-976. Judicial office deemed nonpartisan office; candidate for judicial office prohibited from campaigning or qualifying for office based on party affiliation; prohibition on political party fund-raising, campaigning, or contributions on behalf of candidate for judicial office.
23-15-977. Filing of intent to be candidate and fees by candidates for judicial office; notification of county commissioners of filings; procedures to be followed if there is only one candidate who becomes disqualified from holding judicial office after filing deadline.
23-15-977.1. Signing oath to abide by election laws.
23-15-978. Placement of names of candidates for judicial office should appear on ballot.
23-15-979. Order for listing on ballot of names of candidates for judicial office; references to political party affiliation.
23-15-980. Listing of unopposed candidates for judicial office on general election ballot.
23-15-981. Two or more candidates qualify for judicial office; majority vote wins; runoff election.
23-15-982 through 23-15-984. Repealed.
23-15-985. Electors qualified to vote for candidates for nomination for judicial office.

### § 23-15-971. Repealed.

Repealed by Laws, 1994, ch. 564, § 102, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the repeal of this section).

[Derived from 1942 Code § 3151 [Codes, Hemingway's 1917, § 6431; 1930, § 5904; Laws, 1916, ch. 161; Repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; En, Laws, 1986, ch. 495, § 295. [Am Laws, 1993, ch. 518, § 30]]

**Editor's Notes —**

Former § 23-15-971 was entitled: Supervision of primary elections by State Executive Committees.

The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the repeal of this section by Laws of 1994, ch. 564, § 102.

### § 23-15-973. Opportunities for candidates to address people during court terms; restrictions with respect to political affiliations; penalties for violations.

It shall be the duty of the judges of the circuit court to give a reasonable time and opportunity to the candidates for the office of judge of the Supreme Court, judges of the Court of Appeals, circuit judge and chancellor to address the people during court terms. In order to give further and every possible emphasis to the fact that the said judicial offices are not political but are to be held without favor and with absolute impartiality as to all persons, and because of the jurisdiction conferred upon the courts by this chapter, the judges thereof should be as far removed as possible from any political affiliations or obligations. It shall be unlawful for any candidate for any of the offices mentioned in this section to align himself with any candidate or candidates for any other office or with any political faction or any political party at any time during any primary or general election campaign. Likewise it shall be unlawful for any candidate for any other office nominated or to be nominated at any primary election, wherein any candidate for any of the judicial offices in this section mentioned, is or are to be nominated, to align himself with any one or more of the candidates for said offices or to take any part whatever in any nomination for any one or more of said judicial offices, except to cast his individual vote. Any candidate for any office, whether nominated with or without opposition, at any primary wherein a candidate for any one of the judicial offices herein mentioned is to be nominated who shall deliberately, knowingly and willfully violate the provisions of this section shall forfeit his nomination, or if elected at the following general election by virtue of said nomination, his election shall be void.

**HISTORY:**

Derived from § 23-3-63 Codes, 1942, § 3191; Laws, 1935, ch. 19; repealed by Laws, 1986, ch. 495, § 333; en, Laws, 1986, ch. 495, § 296; Laws, 1994, ch 564, § 93, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the amendment of this section).

**Editor's Notes —**

The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 93.

**RESEARCH REFERENCES**

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 467-471, 473-477.

46 Am. Jur. 2d, Judges § 8.

**CJS.**

29 C.J.S., Elections §§ 573-583.

48A C.J.S., Judges §§ 15, 16, 23-26, 28-32.

**Law Reviews.**

The Least of Evils for Judicial Selection, 21 Miss. C. L. Rev. 209, Spring, 2002.

## § 23-15-974. Nonpartisan Judicial Election Act; short title.

Sections 23-15-974 through 23-15-985 of this subarticle shall be known as the "Nonpartisan Judicial Election Act."

**HISTORY:**

Laws, 1994, ch 564, § 76, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the addition of this section).

**Editor's Notes —**

The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 1994, ch. 564, § 76.

### § 23-15-975. "Judicial office" defined; positions deemed positions as full-time positions; prohibition against practice of law.

As used in Sections 23-15-974 through 23-15-985 of this subarticle, the term "judicial office" includes the office of justice of the Supreme Court, judge of the Court of Appeals, circuit judge, chancellor, county court judge and family court judge. All such justices and judges shall be full-time positions and such justices and judges shall not engage in the practice of law before any court, administrative agency or other judicial or quasi-judicial forum except as provided by law for finalizing pending cases after election to judicial office.

**HISTORY:**

Laws, 1994, ch 564, § 77, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the addition of this section).

**Editor's Notes —**

The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 1994, ch. 564, § 77.

Laws of 1999, ch. 432, § 1, provides that:

"SECTION 1. From and after the date Laws, 1999, ch. 432, is effectuated under Section 5 of the Voting Rights Act of 1965 (May 28, 1999), all family courts are abolished. All matters pending in any family court abolished shall be transferred to the county court of the county wherein the family court was located without the necessity for any motion or order of court for such transfer."

#### JUDICIAL DECISIONS

##### ANALYSIS

1.-3. [Reserved for future use.]
4. Evidence.

**1.-3. [Reserved for future use.]**

**4. Evidence.**

Where a judge became involved in lease negotiations pertaining to a barge landing site for a county landfill, and advised one party to the lease on the benefits of dealing with the landfill and drafting the lease agreement himself, he violated Canons 1, 2 A, 2.B, 3 A(1), 3 C, 5 C(1) and 5 F, as well as § 9-1-25 and this section. Mississippi Comm'n on Judicial Performance v. Jenkins, 725 So. 2d 162, 1998 Miss. LEXIS 436 (Miss. 1998).

### § 23-15-976. Judicial office deemed nonpartisan office; candidate for judicial office prohibited from campaigning or qualifying for office based on party affiliation; prohibition on political party fund-raising, campaigning, or contributions on behalf of candidate for judicial office.

A judicial office is a nonpartisan office and a candidate for election thereto is prohibited from campaigning or qualifying for such an office based on party affiliation. The Legislature finds that in order to ensure that campaigns for nonpartisan judicial office remain nonpartisan and without any connection to a political party, political parties and any committee or political committee affiliated with a political party shall not engage in fund-raising on behalf of a candidate or officeholder of a nonpartisan judicial office, nor shall a political party or any committee or political committee affiliated with a political party make any contribution to a candidate for nonpartisan judicial office or the political committee of a candidate for nonpartisan judicial office, nor shall a political party or any committee or political committee affiliated with a political party publicly endorse any candidate for nonpartisan judicial office. No candidate or candidate's political committee for nonpartisan judicial office shall accept a contribution from a political party or any committee or political committee affiliated with a political party.

**HISTORY:**

Laws, 1994, ch 564, § 78; Laws, 1999, ch. 301, § 16, eff from and after January 15, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 1994, ch. 564, § 78.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 301, § 16.

## RESEARCH REFERENCES

**Law Reviews.**

The Least of Evils for Judicial Selection, 21 Miss. C. L. Rev. 209, Spring, 2002.

Judicial Selection – What is Right for Mississippi?, 21 Miss. C. L. Rev. 199, Spring, 2002.

## § 23-15-977. Filing of intent to be candidate and fees by candidates for judicial office; notification of county commissioners of filings; procedures to be followed if there is only one candidate who becomes disqualified from holding judicial office after filing deadline.

(1) Except as otherwise provided in this section, all candidates for judicial office as defined in Section 23-15-975 of this subarticle shall file their intent to be a candidate with the proper officials not later than 5:00 p.m. on the first Friday after the first Monday in May before the general election for judicial office and shall pay to the proper officials the following amounts:

(a) Candidates for Supreme Court judge and Court of Appeals, the sum of Two Hundred Dollars ($200.00).

(b) Candidates for circuit judge and chancellor, the sum of One Hundred Dollars ($100.00).

(c) Candidates for county judge and family court judge, the sum of Fifteen Dollars ($15.00).

Candidates for judicial office may not file their intent to be a candidate and pay the proper assessment before January 1 of the year in which the election for the judicial office is held.

(2) Candidates for judicial offices listed in paragraphs (a) and (b) of subsection (1) of this section shall file their intent to be a candidate with, and pay the proper assessment made pursuant to subsection (1) of this section to, the State Board of Election Commissioners.

(3) Candidates for judicial offices listed in paragraph (c) of subsection (1) of this section shall file their intent to be a candidate with, and pay the proper

assessment made pursuant to subsection (1) of this section to, the circuit clerk of the proper county. The circuit clerk shall notify the county election commissioners of all persons who have filed their intent to be a candidate with, and paid the proper assessment to, such clerk. The notification shall occur within two (2) business days and shall contain all necessary information.

(4) If only one (1) person files his or her intent to be a candidate for a judicial office and that person later dies, resigns or is otherwise disqualified from holding the judicial office after the deadline provided for in subsection (1) of this section but more than seventy (70) days before the date of the general election, the Governor, upon notification of the death, resignation or disqualification of the person, shall issue a proclamation authorizing candidates to file their intent to be a candidate for that judicial office for a period of not less than seven (7) nor more than ten (10) days from the date of the proclamation.

(5) If only one (1) person qualifies as a candidate for a judicial office and that person later dies, resigns or is otherwise disqualified from holding the judicial office within seventy (70) days before the date of the general election, the judicial office shall be considered vacant for the new term and the vacancy shall be filled as provided in by law.

**HISTORY:**

Laws, 1994, ch 564, § 79; Laws, 2000, ch. 592, § 15; Laws, 2010, ch. 379, § 1; Laws, 2011, ch. 509, § 1; Laws, 2017, ch. 441, § 156, eff from and after July 1, 2017.

**Joint Legislative Committee Note —**

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the next-to-last sentence in subsection (3). The word "filed" was deleted following "all persons who filed their intent to be a candidate". The Joint Committee ratified the correction at its July 8, 2004 meeting.

**Editor's Notes —**

The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 1994, ch. 564, § 79.

Laws of 1999, ch. 432, § 1, provides that:

"SECTION 1. From and after the date Laws, 1999, ch. 432, is effectuated under Section 5 of the Voting Rights Act of 1965 (May 28, 1999), all family courts are abolished. All matters pending in any family court abolished shall be transferred to the county court of the county wherein the family court was located without the necessity for any motion or order of court for such transfer."

On May 28, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the enactment of Laws of 1999, ch. 432.

On July 28, 2000, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2000, ch. 450.

By letter dated July 9, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2010, ch. 379, § 1.

By letter dated July 26, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 2011, ch. 509.

**Amendment Notes —**

The 2017 amendment substituted "before" for "prior to" in the introductory paragraph of (1); substituted "election commissioners" for "commissioners of election" in the second sentence of (3); substituted "person later dies" for "person subsequently dies" in (4) and (5); and made gender neutral and minor stylistic changes.

## § 23-15-977.1. Signing oath to abide by election laws.

Simultaneously with filing the required documents to seek election for a judicial office, the candidate shall sign the following pledge under oath and under penalty of perjury:

"State of Mississippi
County of ________

I, (name of candidate), do solemnly swear or affirm under penalty of perjury that I will faithfully abide by all laws, canons and regulations applicable to elections for judicial office, understanding that a campaign for a judicial office should reflect the dignity, responsibility and professional character that a person chosen for a judicial office should possess.

(signature of candidate)
(name of candidate)

Sworn to and subscribed before me, this the day ________ of ________, ________.

________________________________
Notary Public or other official
authorized to administer oaths"

**HISTORY:**

Laws, 1999, ch. 301, § 3, eff from and after January 15, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section).

**Editor's Notes —**

Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 301, § 3.

### JUDICIAL DECISIONS

**1. Remedy.**

Only remedy provided in Miss. Code Ann. § 23-15-977.1 for offering false information in a pledge or oath is a criminal action for perjury, and it provides no civil claim or cause of action for the failure of a candidate to fulfill the pledge or oath; therefore, a chancery court had no jurisdiction to hear such a claim in an election dispute because it was unable to hear criminal matters. In re Bell, 962 So. 2d 537, 2007 Miss. LEXIS 124 (Miss. 2007).

## § 23-15-978. Placement of names of candidates for judicial office should appear on ballot.

The names of candidates for judicial office which appear on the ballot at the general election shall be grouped together on a separate portion of the ballot, clearly identified as nonpartisan judicial elections.

**HISTORY:**

Laws, 1994, ch 564, § 80, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the addition of this section).

**Editor's Notes —**

The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 1994, ch. 564, § 80.

## § 23-15-979. Order for listing on ballot of names of candidates for judicial office; references to political party affiliation.

The names of all candidates for judicial office shall be listed in alphabetical order on any ballot and no reference to political party affiliation shall appear on any ballot with respect to any nonpartisan judicial office or candidate.

**HISTORY:**

Laws, 1994, ch 564, § 81, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the addition of this section).

**Editor's Notes —**

The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 1994, ch. 564, § 81.

### RESEARCH REFERENCES

**Law Reviews.**

The Least of Evils for Judicial Selection, 21 Miss. C. L. Rev. 209, Spring, 2002.

## § 23-15-980. Listing of unopposed candidates for judicial office on general election ballot.

The name of an unopposed candidate for judicial office shall be placed on the general election ballot.

**HISTORY:**

Laws, 1994, ch 564, § 82, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the addition of this section).

**Editor's Notes —**

The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 1994, ch. 564, § 82.

## § 23-15-981. Two or more candidates qualify for judicial office; majority vote wins; runoff election.

If two (2) or more candidates qualify for judicial office, the names of those candidates shall be placed on the general election ballot. If any candidate for such an office receives a majority of the votes cast for such office in the general election, he shall be declared elected. If no candidate for such office receives a majority of the votes cast for such office in the general election, the names of the two (2) candidates receiving the highest number of votes for such office shall be placed on the ballot for a second election to be held three (3) weeks later in accordance with appropriate procedures followed in other elections involving runoff candidates.

**HISTORY:**

Laws, 1994, ch 564, § 83; Laws, 2007, ch. 434, § 3, eff June 15, 2007 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**
The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 1994, ch. 564, § 83.

On June 15, 2007, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 2007, ch. 434.

### OPINIONS OF THE ATTORNEY GENERAL

If the candidate with the most votes or the candidate with the second most votes declines to enter the runoff, the candidate with the next highest votes would be entitled to have his name placed on the runoff ballot. 2002 Miss. Op. Att'y Gen. 676.

### RESEARCH REFERENCES

**ALR.**
Validity of Runoff Voting Election Methodology. 67 A.L.R.6th 609.

**Am. Jur.**
26 Am. Jur. 2d, Elections § 375.

**Law Reviews.**
The Least of Evils for Judicial Selection, 21 Miss. C. L. Rev. 209, Spring, 2002.

## §§ 23-15-982 through 23-15-984. Repealed.

Repealed by Laws, 2005, ch. 501, § 20, eff from and after Jan. 1, 2007.

§ 23-15-982. [Laws, 1994, ch 564, § 84; Laws, 1997, ch. 378, § 2, eff from and after October 21, 1997 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).]

§ 23-15-983. [Laws, 1994, ch 564, § 85; Laws, 1997, ch. 378, § 3, eff from and after October 21, 1997 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section).]

§ 23-15-984. [Laws, 1994, ch 564, § 86, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the addition of this section).]

**Editor's Notes —**
Former §§ 23-15-982 through 23-15-984 provided for the calculation of the vote in multi-judge districts in which candidates run "in the herd" and the number of votes that may be cast by each elector.

On July 15, 2005, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the repeal of these sections by Laws of 2005, ch. 501, § 20.

## § 23-15-985. Electors qualified to vote for candidates for nomination for judicial office.

In any election for judicial office, all qualified electors, regardless of party affiliation or lack thereof, shall be qualified to vote for candidates for nomination for judicial office.

**HISTORY:**

Laws, 1994, ch 564, § 87, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the addition of this section).

**Editor's Notes —**

The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws, 1994, ch. 564, § 87.

# SUBARTICLE B.

# SUPREME COURT JUDGESHIPS.

Sec.
23-15-991. Term of office; elections.
23-15-993. Each of judgeships deemed separate office; designation of positions for offices.
23-15-994. Elections for judge of Court of Appeals to be as prescribed in Section 9-4-1 et seq.
23-15-995. Applicability to election of general laws for election of state officers.
23-15-997. Repealed.

## § 23-15-991. Term of office; elections.

The term of office of judges of the Supreme Court shall be eight (8) years. Concurrently with the regular election for representatives in Congress, held next preceding the expiration of the term of an incumbent, and likewise each eighth year thereafter, an election shall be held in the Supreme Court district from which such incumbent was elected at which there shall be elected a successor to the incumbent, whose term of office shall thereafter begin on the first Monday of January of the year in which the term of the incumbent he succeeds expires.

**HISTORY:**

Derived from 1972 Code § 23-5-239 [Codes, Hemingway's 1917, § 6850; 1930, § 6284; 1942, § 3313; Laws, 1916, ch. 161; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 297, eff from and after January 1, 1987.

**Cross References —**

Provision that times for holding primary and general elections for the office of judge of the Supreme Court shall be as prescribed in this section and § 23-15-997 [Repealed.], see § 23-15-197.

### JUDICIAL DECISIONS

**1. In general.**

State judicial elections come within coverage of "results test" provisions of § 2 of Voting Rights Act of 1965 (42 USCS § 1973), as amended in 1982; if term "representatives" limited coverage with respect to judicial elections, limitation would exclude all claims involving judicial elections; better reading of term describes winners of representative, popular elections. Chisom v. Roemer, 501 U.S. 380, 111 S. Ct. 2354, 115 L. Ed. 2d 348, 1991 U.S. LEXIS 3627 (U.S. 1991).

### RESEARCH REFERENCES

**Am. Jur.**

46 Am. Jur. 2d, Judges §§ 11 et seq.

**CJS.**

48A C.J.S., Judges §§ 49-51.

**Law Reviews.**

Case, In search of an independent judiciary: alternatives to judicial elections in Mississippi. 13 Miss. C. L. Rev. 1, Fall, 1992.

## § 23-15-993. Each of judgeships deemed separate office; designation of positions for offices.

For the purpose of all elections, each of the nine (9) judgeships of the Supreme Court shall be considered a separate office. The three (3) offices in each of the three (3) Supreme Court districts shall be designated Position Number 1, Position Number 2 and Position Number 3, and in qualifying for office as a candidate for any office of judge of the Supreme Court each candidate shall state the position number of the office to which he aspires and the regular election ballots shall so indicate. In Supreme Court District Number 1: Position Number 1 shall be that office for which the term ends in January, 1966; Position Number 2 shall be that office for which the term ends in January, 1965; and Position Number 3 shall be that office for which the term ends in January, 1969. In District Number 2: Position Number 1 shall be that office for which the term ends in January, 1972; Position Number 2 shall be that office for which the term ends in January, 1969; and Position Number 3 shall be for that office for which the term ends in January, 1973. In District Number 3: Position Number 1 shall be that office for which the term ends in January, 1969; Position Number 2 shall be that office for which the term ends in January, 1969; and Position Number 3 shall be that office for which the term ends in January, 1965.

**HISTORY:**

Derived from 1972 Code § 23-5-241 [Codes, 1942, § 3313.5; Laws, 1952, ch. 244, §§ 1-3; Laws, 1964, ch. 361; Laws, 1970, ch. 506, § 31; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 298; Laws, 1994, ch 564, § 94, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the amendment of this section).

**Editor's Notes —**

The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws, 1994, ch. 564, § 94.

### JUDICIAL DECISIONS

**1. In general.**

State system of electing judges to Supreme Court, including at-large, multi-member features, and east-to-west district lines dividing state into three districts did not dilute black voting strength, and did not violate § 2 of Federal Voting Rights Act of 1965. Magnolia Bar Ass'n v. Lee, 793 F. Supp. 1386, 1992 U.S. Dist. LEXIS 10889 (S.D. Miss. 1992), aff'd, 994 F.2d 1143, 1993 U.S. App. LEXIS 17043 (5th Cir. Miss. 1993).

## § 23-15-994. Elections for judge of Court of Appeals to be as prescribed in Section 9-4-1 et seq.

Elections for the office of judge of the Court of Appeals shall be as prescribed in Section 9-4-1, et seq.

**HISTORY:**

Laws, 2017, ch. 441, § 157, eff from and after July 1, 2017.

### § 23-15-995. Applicability to election of general laws for election of state officers.

Except as may be otherwise provided by the provisions of Sections 23-15-974 through 23-15-985, the general laws for the election of state officers shall apply to and govern the election of judges of the Supreme Court.

**HISTORY:**

Derived from 1972 Code § 23-5-213 [Codes, Hutchinson's 1848, ch. 7, art 4 (4); 1857, ch. 4, art 42; 1871, § 382; 1880, § 168; 1892, § 3702; 1906, § 4209; Hemingway's 1917, § 6845; 1930, § 6271; 1942, § 3300; Laws, 1902, ch. 105; Laws, 1944, Ex ch. 4; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 229; Laws, 1994, ch 564, § 95, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the amendment of this section).

**Editor's Notes —**

The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 95.

#### JUDICIAL DECISIONS

**1. In general.**

State judicial elections come within coverage of "results test" provisions of § 2 of Voting Rights Act of 1965 (52 USCS § 10301), as amended in 1982; if term "representatives" limited coverage with respect to judicial elections, limitation would exclude all claims involving judicial elections; better reading of term describes winners of representative, popular elections. Chisom v. Roemer, 501 U.S. 380, 111 S. Ct. 2354, 115 L. Ed. 2d 348, 1991 U.S. LEXIS 3627 (U.S. 1991).

#### RESEARCH REFERENCES

**Am. Jur.**

25 Am. Jur. 2d, Elections §§ 3-7.
46 Am. Jur. 2d, Judges § 8.

**CJS.**

29 C.J.S., Elections § 10.
48A C.J.S., Judges §§ 23-26, 28-32.

**Law Reviews.**

Case, In search of an independent judiciary: alternatives to judicial elections in Mississippi. 13 Miss. C. L. Rev. 1, Fall, 1992.

### § 23-15-997. Repealed.

Repealed by Laws, 1994, ch 564, § 102, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the repeal of this section).

[Derived from 1942 Code § 3149 [Codes, Hemingway's 1917, § 6429; 1930, § 5902; Laws, 1916, ch. 161; Repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; En Laws, 1986, ch. 495, § 300, eff from and after January 1, 1987.]

**Editor's Notes —**

Former § 23-15-997 was entitled: Nominations by districts; primary elections; applicability of general primary election laws.

The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the repeal of this section by Laws of 1994, ch. 564, § 102.

**Cross References —**

Provision that times for holding primary and general elections for the office of judge of the Supreme Court shall be as prescribed in this section and § 23-15-991, see § 23-15-197.

## SUBARTICLE C.

## CIRCUIT COURT JUDGES AND CHANCELLORS.

Sec.
23-15-1011. Time of taking office; term of office.
23-15-1013. Repealed.
23-15-1015. Dates of elections; applicability to elections of laws regulating general elections.

### § 23-15-1011. Time of taking office; term of office.

Circuit court judges and chancery court judges so elected shall take office at the time, and hold office for the term, provided in Sections 9-5-1 and 9-7-1, Mississippi Code of 1972.

**HISTORY:**

Derived from 1972 Code § 23-5-237 [Codes, Hemingway's 1917, § 6838; 1930, § 6282; 1942, § 3311; Laws, 1914, ch. 150; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 301, eff from and after January 1, 1987.

**RESEARCH REFERENCES**

**Am. Jur.**

46 Am. Jur. 2d, Judges §§ 11 et seq.

**CJS.**

48A C.J.S., Judges §§ 4′, 42 et seq.

**Law Reviews.**

Case, In search of an independent judiciary: alternatives to judicial elections in Mississippi. 13 Miss. C. L. Rev. 1, Fall, 1992.

### § 23-15-1013. Repealed.

Repealed by Laws, 1994, ch 564, § 102, eff from and after September 6, 1994 (the date the United States Attorney General interposed no objection to the repeal of this section).

[Derived from 1942 Code § 3148 [Codes, Hemingway's 1917, § 6428; 1930, § 5901; Laws, 1914, ch. 150; Repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; En, Laws, 1986, ch. 495, § 302, eff from and after January 1, 1987.]

**Editor's Notes —**

Former § 23-15-1013 was entitled: Nominations; primary elections; applicability of general primary election laws.

The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the repeal of this section by Laws of 1994, ch. 564, § 102.

**Cross References —**

Provision that times for holding primary and general elections for the office of circuit court judge or chancery court judge shall be as prescribed in this section and § 23-15-1015, see § 23-15-197.

### § 23-15-1015. Dates of elections; applicability to elections of laws regulating general elections.

On Tuesday after the first Monday in November 1986, and every four (4) years thereafter and concurrently with the election for representatives in Congress, there shall be held an election in every county for judges of the several circuit and chancery court districts. The laws regulating the general elections shall, except as otherwise provided for in Sections 23-15-974 through 23-15-985, apply to and govern elections of judges of the circuit and chancery courts.

**HISTORY:**

Derived from 1972 Code § 23-5-235 [Codes, Hemingway's 1917, § 6837; 1930, § 6281; 1942, § 3310; Laws, 1914, ch. 150; repealed by Laws, 1986, ch. 495, § 335]; Laws, 1986, ch. 495, § 303; Laws, 1994, ch. 564, § 96; Laws, 2002, ch. 356, § 4, eff July 22, 2002 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

The United States Attorney General, by letter dated September 6, 1994, interposed no objection, under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1994, ch. 564, § 96.

The United States Attorney General, by letter dated July 22, 2002, interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment of this section by Laws of 2002, ch. 356. The amendment was contingent on ratification, by the electorate, of Senate Concurrent Resolution No. 543 (Laws of 2002, ch. 713). Ratification having failed, the amendment did not become law.

Laws of 2002, ch. 356, § 6, provides as follows:

"SECTION 6. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended, provided that Senate Concurrent Resolution No. 543, 2002 Regular Session [Laws, 2002, ch. 713], is ratified by the electorate."

Laws of 2002, ch. 713 (Senate Concurrent Resolution No. 543) provides in pertinent part:

"BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI, That the following amendment to the Mississippi Constitution of 1890 is proposed to the qualified electors of the state:

"Amend Section 153, Mississippi Constitution of 1890, to read as follows:

"Section 153. The judges of the circuit and chancery courts shall be elected by the people in a manner and at a time to be provided by the Legislature. The judges elected for a term of office beginning from and after January 1, 2003, shall hold their office for a term of six (6) years.

"BE IT FURTHER RESOLVED, That this proposed amendment shall be submitted by the Secretary of State to the qualified electors at an election to be held on the first Tuesday after the first Monday of November 2002, as provided by Section 273 of the Constitution and by general law.

"BE IT FURTHER RESOLVED, That the explanation of this proposed amendment for the ballot shall read as follows: 'This proposed constitutional amendment increases the terms of office of circuit and chancery court judges from four to six years beginning January 1, 2003.'

"BE IT FURTHER RESOLVED, That the Attorney General of the State of Mississippi shall submit this resolution, immediately upon adoption by the Legislature, to the Attorney General of the United States or to the United States District Court for the District of Columbia, in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended."

**Cross References —**

Provision that times for holding primary and general elections for the office of circuit court judge or chancery court judge shall be as prescribed in this section and former § 23-15-1013, see § 23-15-197.

## RESEARCH REFERENCES

**ALR.**

Scheduling election on religious holiday as violation of federal constitutional rights. 44 A.L.R. Fed. 886.

**Am. Jur.**

25 Am. Jur. 2d, Elections §§ 3-7.

46 Am. Jur. 2d, Judges § 8.

**CJS.**

29 C.J.S., Elections § 10.

48A C.J.S., Judges §§ 23-26, 28-32.

**Law Reviews.**

Case, In search of an independent judiciary: alternatives to judicial elections in Mississippi. 13 Miss. C. L. Rev. 1, Fall, 1992.

# SUBARTICLE D.

# CAMPAIGN FINANCING.

Sec.

23-15-1021. Limitations on contributions.

23-15-1023. Disclosure of campaign finances.

23-15-1025. Distribution of campaign materials.

## § 23-15-1021. Limitations on contributions.

It shall be unlawful for any individual or political action committee not affiliated with a political party to give, donate, appropriate or furnish directly or indirectly, any money, security, funds or property in excess of Two Thousand Five Hundred Dollars ($2,500.00) for the purpose of aiding any candidate or candidate's political committee for judge of a county, circuit or chancery court or in excess of Five Thousand Dollars ($5,000.00) for the purpose of aiding any candidate or candidate's political committee for judge of the Court of Appeals or justice of the Supreme Court, or to give, donate, appropriate or furnish directly or indirectly, any money, security, funds or property in excess of Two Thousand Five Hundred Dollars ($2,500.00) to any candidate or the candidate's political committee for judge of a county, circuit or chancery court or in excess of Five Thousand Dollars ($5,000.00) for the purpose of aiding any candidate or candidate's political committee for judge of the Court of Appeals or justice of the Supreme Court, as a contribution to the expense of a candidate for judicial office.

**HISTORY:**

Laws, 1999, ch. 301, § 1, eff from and after January 15, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section).

**Editor's Notes —**

Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the addition of this section by Laws of 1999, ch. 301, § 1.

**Comparable Laws from other States —**

Alabama Code, §§ 17-5-1 et seq. and 36-25-6.

Arkansas Code Annotated, §§ 7-6-201 through 7-6-227.

Georgia Code Annotated, §§ 21-5-30 et seq.

Louisiana Revised Statutes Annotated, §§ 18:1481 et seq.

Tennessee Code Annotated, §§ 2-10-101 et seq.

Texas Election Code, §§ 251.001 et seq., 258.001 et seq.

**Federal Aspects—**

Federal election campaigns – disclosure of federal campaign funds, see 52 USCS § 30101 et seq.

Federal election campaigns – general provisions, see 52 USCS § 30141 et seq.

### RESEARCH REFERENCES

**ALR.**

Constitutional Validity of State or Local Regulation of Contributions by or to Political Action Committees. 24 A.L.R. 6th 179.

Construction and Application of Supreme Court's Holding in *Citizens United v. Federal Election Com'n,* 130 S. Ct. 876, 175 L. Ed. 2d 753, 187 L.R.R.M. (BNA) 2961, 159 Lab. Cas. (CCH) P 10166 (2010), That Government May Not Prohibit Independent and Indirect Corporate Expenditures on Political Speech. 65 A.L.R.6th 503.

### § 23-15-1023. Disclosure of campaign finances.

Judicial candidates shall disclose the identity of any individual or entity from which the candidate or the candidate's committee receives a loan or other extension of credit for use in his campaign and any cosigners for a loan or extension of credit. The candidate or the candidate's committee shall disclose how the loan or other extension of credit was used, and how and when the loan or other extension of credit is to be repaid and the method of repayment. The candidate or the candidate's committee shall disclose all loan documents related to such loans or extensions of credit.

**HISTORY:**

Laws, 1999, ch. 301, § 2, eff from and after January 15, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section).

**Editor's Notes —**

Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws, 1999, ch. 301, § 2.

**Cross References —**

Disclosure of campaign finances, generally, see § 23-15-801 et seq.

Campaign finance requirements; contributions and disbursements of candidates and political committees, see § 23-15-807.

### § 23-15-1025. Distribution of campaign materials.

If any material is distributed by a judicial candidate or his campaign committee or any other person or entity, or at the request of the candidate, his campaign committee or any other person or entity distributing the material shall state that it is distributed by the candidate or that it is being distributed with the candidate's approval. All such material shall conspicuously identify who has prepared the material and who is distributing the material. The identifying language shall state whether or not the material has been submitted to and approved by the candidate. If the candidate has not approved the material, the material shall so state. The identity of organizations or committees shall state the names of all officers of the organizations or committees. Any person, who violates the provisions of this section, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of One Thousand Dollars ($1,000.00) or by imprisonment for six (6) months or both fine and imprisonment.

**HISTORY:**

Laws, 1999, ch. 301, § 4, eff from and after January 15, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section).

**Editor's Notes —**

Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State

Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 301, § 4.

# ARTICLE 33.

# MEMBERS OF CONGRESS.

Sec.
23-15-1031. Dates of primary elections for congressmen; nomination of candidates for U.S. Senator; certification of vote for U.S. Senator.
23-15-1033. Election of representatives in Congress by districts; issuance of commissions by Governor.
23-15-1035. Qualifications of representatives in Congress.
23-15-1037. Division of state into five congressional districts.
23-15-1039. Election of representatives in Congress in event of change in number of representatives to which state is entitled.
23-15-1041. Election of U.S. Senators by qualified electors of Mississippi; issuance of commissions by Governor.

## § 23-15-1031. Dates of primary elections for congressmen; nomination of candidates for U.S. Senator; certification of vote for U.S. Senator.

Except as provided by Section 23-15-1081, the first primary election for Congressmen shall be held on the first Tuesday in June of the years in which congressmen are elected, and a second primary, if necessary, shall be held three (3) weeks thereafter. Each year in which a presidential election is held, the congressional primary shall be held as provided in Section 23-15-1081. The election shall be held in all districts of the state on the same day. Candidates for United States Senator shall be nominated at the congressional primary next preceding the general election at which a senator is to be elected and in the same manner that congressmen are nominated. The chair and secretary of the state executive committee shall certify the vote for United States Senator to the Secretary of State in the same manner that county executive committees certify the returns of counties in general state and county primary elections.

**HISTORY:**

Derived from 1942 Code § 3111 [Codes, Hemingway's 1917, § 6392; 1930, § 5870; Laws, 1914, ch. 149; Laws, 1944, ch. 173; Laws, 1947, 1st Ex ch. 15, § 2; Laws, 1960, ch. 444, §§ 1-3; Laws, 1982, ch. 477, § 2; Laws, 1986, ch. 484, § 13; repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 346]; en, Laws, 1986, ch. 495, § 304; Laws, 2017, ch. 441, § 158, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment, in the first sentence, deleted "may be otherwise" following "Except as," and substituted "and a second primary, if necessary" for "and the second primary, when one is necessary"; and divided the former last sentence into the present next-to-last and last sentences by substituting "are nominated. The chair" for "are nominated, and the chairman."

**Cross References —**

Provision that times for holding primary and general elections for congressional offices shall be as prescribed in §§ 23-15-1031, 23-15-1033, and 23-15-1041, see § 23-15-197.

Alternative to the congressional primary election date set forth in this section, see § 23-15-1083.

RESEARCH REFERENCES

**ALR.**
Scheduling election on religious holiday as violation of federal constitutional rights. 44 A.L.R. Fed. 886.

**Am. Jur.**
26 Am. Jur. 2d, Elections §§ 223-237.

**CJS.**
29 C.J.S., Elections §§ 200-235.
91 C.J.S., United States § 19.

**Law Reviews.**
Stavis, A century of struggle for black enfranchisement in Mississippi: From the Civil War to the congressional challenge of 1965-and beyond. 57 Miss. L. J. 591, December, 1987.

Rhodes, Enforcing the Voting Rights Act in Mississippi through litigation. 57 Miss. L. J. 705, December, 1987.

Mississippi Election Code of 1986, 56 Miss L. J. 535, December 1986.

## § 23-15-1033. Election of representatives in Congress by districts; issuance of commissions by Governor.

Representatives in the Congress of the United States shall be chosen by districts on the first Tuesday after the first Monday of November in the year 1986, and every two (2) years thereafter. The laws regulating general elections shall apply to and govern elections for representatives in Congress; and the Governor shall issue a commission to the person elected in each district.

**HISTORY:**
Derived from 1972 Code § 23-5-217 [Codes, Hutchinson's 1848, ch. 7, art 5 (10); 1857, ch. 4, art 32; 1871, § 360; 1880, § 160; 1892, § 3687; 1906, § 4194; Hemingway's 1917, § 6828; 1930, § 6273; 1942, § 3302; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 305; Laws, 2017, ch. 441, § 159, eff from and after July 1, 2017.

**Amendment Notes —**
The 2017 amendment divided the former section into the present first and second sentences by substituting "thereafter. The laws" for "thereafter; and the laws"; and in the second sentence, deleted "in all respects" following "general elections shall" and substituted "each district" for "each of said districts" at the end.

**Cross References —**
Provision that times for holding primary and general elections for congressional offices shall be as prescribed in §§ 23-15-1031, 23-15-1033, and 23-15-1041, see § 23-15-197.

RESEARCH REFERENCES

**Am. Jur.**
26 Am. Jur. 2d, Elections §§ 302 et seq.
77 Am. Jur. 2d, United States § 8.

**CJS.**
29 C.J.S., Elections §§ 308, 309 et seq.
91 C.J.S., United States §§ 16-21.

## § 23-15-1035. Qualifications of representatives in Congress.

Each congressional district shall be entitled to one (1) representative, who shall have attained the age of twenty-five (25) years, and been seven (7) years a citizen of the United States, and who shall, when elected, be an inhabitant of this state.

**HISTORY:**
Derived from 1972 Code § 23-5-219 [Codes, 1857, ch. 4, art 33; 1880, § 161; 1892, § 3688; 1906, § 4195; Hemingway's 1917, § 6829; 1930, § 6274; 1942, § 3303; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 306, eff from and after January 1, 1987.

RESEARCH REFERENCES

**ALR.**
Validity of requirement that candidate or public officer have been resident of governmental unit for specified period. 65 A.L.R.3d 1048.

**Am. Jur.**
77 Am. Jur. 2d, United States §§ 6 et seq.

**CJS.**
91 C.J.S., United States §§ 14 et seq.

### § 23-15-1037. Division of state into five congressional districts.

(1) The State of Mississippi is hereby divided into five (5) congressional districts below:

**FIRST DISTRICT. —** The First Congressional District shall be composed of the following counties and portions of counties:

Alcorn, Benton, Calhoun, Chickasaw, Choctaw, DeSoto, Itawamba, Lafayette, Lee, Marshall, Monroe, Pontotoc, Prentiss, Tate, Tippah, Tishomingo, Union, Webster, Yalobusha; in Grenada County the precincts of Providence, Mt. Nebo, Hardy and Pea Ridge; in Montgomery County the precincts of North Winona, Lodi, Stewart, Nations and Poplar Creek; in Oktibbeha County, the precincts of Double Springs, Maben and Sturgis; in Panola County the precincts of East Sardis, South Curtis, Tocowa, Pope, Courtland, Cole's Point, North Springport, South Springport, Eureka, Williamson, East Batesville 4, West Batesville 4, Fern Hill, North Batesville A, East Batesville 5 and West Batesville 5; and in Tallahatchie County the precincts of Teasdale, Enid, Springhill, Charleston Beat 1, Charleston Beat 2, Charleston Beat 3, Paynes, Leverette, Cascilla, Murphreesboro and Rosebloom.

**SECOND DISTRICT. —** The Second Congressional District shall be composed of the following counties and portions of counties:

Bolivar, Carroll, Claiborne, Coahoma, Holmes, Humphreys, Issaquena, Jefferson, Leflore, Quitman, Sharkey, Sunflower, Tunica, Warren, Washington, Yazoo; in Attala County the precincts of Northeast, Hesterville, Possomneck, North Central, McAdams, Newport, Sallis and Southwest; that portion of Grenada County not included in the First Congressional District; in Hinds County Precincts 11, 12, 13, 22, 23, 27, 28, 29, 30, 40, 41, 83, 84 and 85, and the precincts of Bolton, Brownsville, Cayuga, Chapel Hill, Cynthia, Edwards, Learned, Pine Haven, Pocahontas, St. Thomas, Tinnin, Utica 1 and Utica 2; in Leake County the precincts of Conway, West Carthage, Wiggins, Thomastown and Ofahoma; in Madison County the precincts of Farmhaven, Canton Precinct 2, Canton Precinct 3, Cameron Street, Canton Precinct 6, Bear Creek, Gluckstadt, Smith School, Magnolia Heights, Flora, Virlilia, Canton Precinct 5, Cameron, Couparle, Camden, Sharon, Canton Precinct 1 and Canton Precinct 4; that portion of Montgomery County not included in the First Congressional District; that portion of Panola County not included in the First Congressional District; and that portion of Tallahatchie County not included in the First Congressional District.

**THIRD DISTRICT. —** The Third Congressional District shall be composed of the following counties and portions of counties:

Clarke, Clay, Jasper, Kemper, Lauderdale, Lowndes, Neshoba, Newton, Noxubee, Rankin, Scott, Smith, Winston; that portion of Attala County not included in the Second Congressional District; in Jones County the precincts of Northwest High School, Shady Grove, Sharon, Erata, Glade, Myrick School, Northeast High School, Rustin, Sandersville Civic Center, Tuckers, Antioch and Landrum; that portion of Leake County not included in the Second Congressional District; that portion of Madison County not included in the Second Congressional District; that portion of Oktibbeha County not included in the First Congressional District; and in Wayne County the precincts of Big Rock, Yellow Creek, Hiwannee, Diamond, Chaparral, Matherville, Coit and Eucutta.

**FOURTH DISTRICT. —** The Fourth Congressional District shall be composed of the following counties and portions of counties:

Adams, Amite, Copiah, Covington, Franklin, Jefferson Davis, Lawrence, Lincoln, Marion, Pike, Simpson, Walthall, Wilkinson; that portion of Hinds County not included in the Second Congressional District; and that portion of Jones county not included in the Third Congressional District.

**FIFTH DISTRICT. —** The Fifth Congressional District shall be composed of the following counties and portions of counties:

Forrest, George, Greene, Hancock, Harrison, Jackson, Lamar, Pearl River, Perry, Stone; and that portion of Wayne County not included in the Third Congressional District.

(2) The boundaries of the congressional districts described in subsection (1) of this section shall be the boundaries of the counties and precincts listed in subsection (1) as such boundaries existed on October 1, 1990.

**HISTORY:**

Derived from 1972 Code § 23-5-223 [Codes, 1892, § 3691; 1906, § 4198; Hemingway's 1917, § 6832; 1930, § 6276; 1942, § 3305; Laws, 1902, ch. 61; Laws, 1932, ch. 136; Laws, 1952, ch. 401, § 1; Laws, 1956, ch. 407; Laws, 1962, ch. 576, § 1; Laws, 1966, ch. 616, § 1; Laws, 1972, ch. 305, § 1; Laws, 1981, 1st Ex Sess, ch. 8, § 1; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 307; Laws, 1991 Extra Session, ch. 2, § 1, eff from and after February 21, 1992 (the date the United States Attorney General interposed no objection to this amendment).

**Editor's Notes —**

The United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1991 Extra Session, ch. 2, § 1, on February 21, 1992.

As a result of the 2000 federal decennial census, the number of representatives in Congress to which the State of Mississippi is entitled was reduced from five to four. The State of Mississippi was unable to redraw its congressional districts to reduce the number of districts. The United States District Court for the Southern District of Mississippi, in the case of *Smith v. Clark* (Civil Action No. 3:01-CV-855WS), by order dated February 26, 2002, enjoined the state from implementing the five-district congressional redistricting plan codified in Section 25-15-1037 and ordered the state to implement the four-district congressional redistricting plan adopted by the court in that order for congressional primary and general elections for the State of Mississippi in 2002 and all succeeding congressional primary and general elections thereafter, until the State of Mississippi produced a constitutional congressional redistricting plan. The State of Mississippi was again unable to redistrict its congressional districts following the 2010 federal decennial census. The United State District Court for the Southern District of Mississippi in the case of *Smith v. Hosemann* (Civil Action No. 3:01-cv-855-HTW-DCB), by order dated December 30, 2011, ordered the state to implement the four-district congressional redistricting plan adopted by the court in that order for conducting congressional primary and general elections for the State of Mississippi in 2012, and all succeeding congressional primary and general elections thereafter until such time as the State of Mississippi produces a constitutional congressional redistrict plan.

The congressional districts that the court ordered implemented by the December 30, 2011, order are as described below:

## FIRST DISTRICT

Alcorn MS County
Benton MS County
Calhoun MS County
Chickasaw MS County
Choctaw MS County
Clay MS County
DeSoto MS County
Itawamba MS County
Lafayette MS County
Lee MS County
Lowndes MS County
Marshall MS County
Monroe MS County
Oktibbeha MS County
VTD: Bell Schoolhouse
VTD: Bradley
VTD: Center Grove
VTD: Maben
VTD: Sturgis
Pontotoc MS County
Prentiss MS County
Tate MS County
Tippah MS County
Tishomingo MS County
Union MS County
Webster MS County
Winston MS County

## SECOND DISTRICT

Attala MS County
Bolivar MS County
Carroll MS County
Claiborne MS County
Coahoma MS County
Copiah MS County
Grenada MS County
Hinds MS County
VTD: 10
VTD: 11
VTD: 12
VTD: 13
VTD: 16
VTD: 18
VTD: 19
VTD: 2
VTD: 20
VTD: 21
VTD: 22
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VTD: 97
VTD: Bolton
VTD: Brownsville
VTD: Byram 1
VTD: Byram 2
VTD: Cayuga
VTD: Chapel Hill
VTD: Clinton 1
VTD: Clinton 2
VTD: Clinton 3
VTD: Clinton 4
VTD: Clinton 5
VTD: Clinton 6
VTD: Cynthia
VTD: Dry Grove
VTD: Edwards
VTD: Jackson State
VTD: Learned
VTD: Old Byram
VTD: Pinehaven
VTD: Pocahontas
VTD: Raymond 1
VTD: Raymond 2
VTD: Spring Ridge
VTD: St. Thomas
VTD: Terry
VTD: Tinnin
VTD: Utica 1
VTD: Utica 2
Holmes MS County
Humphreys MS County
Issaquena MS County
Jefferson MS County
Leake MS County
Leflore MS County
Madison MS County
VTD: Bible Church
VTD: Camden
VTD: Cameron
VTD: Canton Precinct 1
VTD: Canton Precinct 2
VTD: Canton Precinct 3
VTD: Canton Precinct 4
VTD: Canton Precinct 5
VTD: Canton Precinct 7
VTD: Cedar Grove
VTD: Couparle
VTD: Liberty
VTD: Luther Branson School
VTD: Mad. Co. Bap. Fam. Lf.Ct
VTD: Magnolia Heights
VTD: New Industrial Park
VTD: Ratliff Ferry
VTD: Sharon
VTD: Tougaloo
VTD: Virlilia
Montgomery MS County
Panola MS County
Quitman MS County
Sharkey MS County
Sunflower MS County
Tallahatchie MS County
Tunica MS County
Warren MS County
Washington MS County
Yalobusha MS County
Yazoo MS County

## THIRD DISTRICT

Adams MS County
Amite MS County
Clarke MS County
VTD: Beaver Darn
VTD: Desoto
VTD: East Quitman
VTD: Energy
VTD: Enterprise
VTD: Harmony Beat 1
VTD: Hannony Beat 2
VTD: North Quitman
VTD: Oak Grove
VTD: Pachuta
VTD: Pineridge
VTD: Rolling Creek
VTD: Snell
VTD: Souinlovie
VTD: South Quitman
VTD: Stonewall Beat 1
VTD: Stonewall Beat 3
VTD: Union
Covington MS County
Franklin MS County
Hinds MS County
VTD: 1
VTD: 14
VTD: 15
VTD: 17
VTD: 32
VTD: 33
VTD: 34
VTD: 35
VTD: 36
VTD: 37
VTD: 44
VTD: 45
VTD: 47
VTD: 5
VTD: 78
VTD: 8

VTD: 9
Jasper MS County
Jefferson Davis MS County
Kemper MS County
Lauderdale MS County
Lawrence MS County
Lincoln MS County
Madison MS County
VTD: Bear Creek
VTD: Cobblestone
VTD: Flora
VTD: Gluckstadt
VTD: Highland Colony Bap. Ch.
VTD: Lorman-Cavalier
VTD: Madison 1
VTD: Madison 2
VTD: Madison 3
VTD: Main Harbor
VTD: NorthBay
VTD: Ridgeland 1
VTD: Ridgeland 3
VTD: Ridgeland 4
VTD: Ridgeland First Meth. Ch.
VTD: Ridgeland Tennis Center
VTD: Smith School
VTD: SunnyBrook
VTD: Trace Harbor
VTD: Victory Baptist Church
VTD: Whispering Lake
VTD: Yandell Road
Neshoba MS County
Newton MS County
Noxubee MS County
Oktibbeha MS County
VTD: Central Starkville
VTD: Craig Springs
VTD: Double Springs
VTD: East Starkville
VTD: Gillespie Street Center
VTD: Hickory Grove
VTD: North Adaton
VTD: North Longview
VTD: North Starkville 2
VTD: North Starkville 3
VTD: Northeast Starkville
VTD: Oktoc
VTD: Osborn
VTD: Self Creek
VTD: Sessums
VTD: South Adaton
VTD: South Longview
VTD: South Starkville
VTD: Southeast Oktibehha
VTD: West Starkville
Pike MS County
Rankin MS County
Scott MS County
Simpson MS County
Smith MS County
Walthall MS County
Wilkinson MS County

### FOURTH DISTRICT

Clarke MS County
VTD: Carmichael
VTD: Langsdale
VTD: Manassa
VTD: Shubuta
VTD: Springs
Forrest MS County
George MS County
Greene MS County
Hancock MS County
Harrison MS County
Jackson MS County
Jones MS County
Lamar MS County
Marion MS County
Pearl River MS County
Perry MS County
Stone MS County
Wayne MS County

## JUDICIAL DECISIONS

### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-5-223.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-5-223.**

Former enactment held constitutional by the Supreme Court of the United States. Wood v. Broom, 287 U.S. 1, 53 S. Ct. 1, 77 L. Ed. 131, 1932 U.S. LEXIS 1 (U.S. 1932).

Writ of mandamus will not be issued to compel at-large Congressional election, where it was alleged that congressional districts failed to meet test of equality in number of inhabitants. Wood v. State, 169 Miss. 790, 142 So. 747, 1932 Miss. LEXIS 8 (Miss. 1932).

RESEARCH REFERENCES

**Am. Jur.**
25 Am. Jur. 2d, Elections §§ 11-13.
9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 11-14 (voting districts and apportionment).

**CJS.**
29 C.J.S., Elections §§ 137–139.
91 C.J.S., United States § 18.

**Lawyers' Edition.**
Constitutionality of congressional apportionment – Supreme Court cases. 77 L. Ed. 2d 1474.

### § 23-15-1039. Election of representatives in Congress in event of change in number of representatives to which state is entitled.

Should an election of representatives in Congress occur after the number of representatives to which the state is entitled changes, and before the districts have changed to conform to the new apportionment, representatives shall be chosen as follows: If the number of representatives is increased, then one (1) member shall be chosen in each district as organized, and the additional member or members shall be chosen by the electors of the state at large; and if the number of representatives is decreased, then the whole number shall be chosen by the electors of the state at large.

**HISTORY:**
Derived from 1972 Code § 23-5-225 [Codes, Hutchinson's 1848, ch. 7, art 11; 1857, ch. 4, art 36; 1880, § 163; 1892, § 3690; 1906, § 4197; Hemingway's 1917, § 6831; 1930, § 6277; 1942, § 3306; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 308; Laws, 2017, ch. 441, § 160, eff from and after July 1, 2017.

**Amendment Notes —**
The 2017 amendment, in the first sentence, substituted "entitled changes" for "entitled shall be changed, in consequence of a new apportionment being made by Congress" and "districts have changed" for "districts shall have been changed"; and in the second sentence, substituted "If the number of representative is increased" for "In case the number of representatives to which the state is entitled be increased" and "representatives is decreased" for "representatives shall be diminished" near the end.

JUDICIAL DECISIONS

**1. At-large elections.**
Since the State Legislature failed in its duty to provide for new congressional districts after its delegation to the United States House of Representatives was reduced from five representatives to four representatives following the decennial census, the default procedure under Miss. Code Ann. § 23-15-1039 provided for at-large elections; however, such a procedure could not be presently used since the State was under a federal court injunction directing that it use the congressional districts drawn by the three-judge federal trial court and, thus, that the court either had to vacate the injunction or the State Legislature had to draw a redistricting plan meeting federal voting law requirements before an at-large election could be held. Mauldin v. Branch, 866 So. 2d 429, 2003 Miss. LEXIS 849 (Miss. 2003).

RESEARCH REFERENCES

**Am. Jur.**
25 Am. Jur. 2d, Elections §§ 11-13.
77 Am. Jur. 2d, United States § 8.
9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 11-14 (voting districts and apportionment).

**CJS.**
29 C.J.S., Elections §§ 137–139.
91 C.J.S., United States § 18.

**Lawyers' Edition.**
Constitutionality of congressional apportionment-Supreme Court cases. 77 L. Ed. 2d 1474.

### § 23-15-1041. Election of U.S. Senators by qualified electors of Mississippi; issuance of commissions by Governor.

There shall be elected, by the qualified electors of Mississippi, one (1) United States Senator at the same time and in the same manner that members of the lower house of Congress are elected in 1988, and every six (6) years thereafter; and in the same manner there shall be one (1) United States Senator elected at the congressional election in 1990, and every six (6) years thereafter; and the person elected shall be commissioned by the Governor.

**HISTORY:**
Derived from 1972 Code § 23-5-227 [Codes, Hemingway's 1917, § 6834; 1930, § 6278; 1942, § 3307; Laws, 1914, ch. 148; repealed by Laws, 1986, ch. 495, § 335]; en, Laws, 1986, ch. 495, § 309; Laws, 2017, ch. 441, § 161, eff from and after July 1, 2017.

**Amendment Notes —**
The 2017 amendment substituted "qualified electors of Mississippi" for "electors of Mississippi, qualified under the law to vote for representatives in the lower house of Congress."

**Cross References —**
Provision that times for holding primary and general elections for congressional offices shall be as prescribed in §§ 23-15-1031, 23-15-1033, and 23-15-1041, see § 23-15-197.

#### RESEARCH REFERENCES

**Am. Jur.**
25 Am. Jur. 2d, Elections §§ 11-13.
26 Am. Jur. 2d, Elections §§ 218, 219, 266.
77 Am. Jur. 2d, United States §§ 6 et seq.
9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 11-14 (voting districts and apportionment).

**CJS.**
29 C.J.S., Elections §§ 73-75, 200-235, 308, 309 et seq.
91 C.J.S., United States §§ 16-21.

**Lawyers' Edition.**
Constitutionality of congressional apportionment-Supreme Court cases. 77 L. Ed. 2d 1474.

## ARTICLE 35.

## POLITICAL PARTIES.

Sec.
23-15-1051. Performance of duties by State Executive Committee; qualification of candidates with State Executive Committee.
23-15-1053. Methods and procedures for selection of county and state executive committees.
23-15-1054. Methods and procedures for selection of temporary county executive committee.
23-15-1055. Methods and procedures for selection of delegates and delegate alternates to national nominating conventions.
23-15-1057. Reconvening of state convention; delegates, notice, and power and authority.
23-15-1059. Registration on behalf of state executive committees.
23-15-1061. Affidavit to accompany applications for registration; registration on behalf of district and county executive committees; proof of compliance with laws.
23-15-1063. Prohibition against participation in elections or primaries by political parties not duly organized and registered.
23-15-1065. Misrepresentation as to office in, or nomination by, political party; penalties.

Sec.
23-15-1067. General prohibitions; injunctions.
23-15-1069. Provisions applicable to all registered political parties.

### § 23-15-1051. Performance of duties by State Executive Committee; qualification of candidates with State Executive Committee.

All duties in regard to senatorial or other districts of more than one (1) county shall be performed by the State Executive Committee. All candidates for any such office shall qualify with the State Executive Committee in the time and manner established by law.

**HISTORY:**

Derived from 1972 Code § 23-1-1 [Codes, 1892, §§ 3256, 3257; 1906, § 3698; Hemingway's 1917, § 6389; 1930, § 5865; 1942, § 3106; Laws, 1960, ch. 442; repealed by Laws, 1986, ch. 495, § 331]; en, Laws, 1986, ch. 495, § 310; Laws, 2017, ch. 441, § 162, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment rewrote the section, which read: "All duties in regard to senatorial or other districts of more than one county shall be performed by the State Executive Committee; and candidates for any office from such district shall qualify with the State Executive Committee as the law provides."

**RESEARCH REFERENCES**

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 199, 200.

**CJS.**

29 C.J.S., Elections §§ 195, 196.

### § 23-15-1053. Methods and procedures for selection of county and state executive committees.

Subject to federal law and national party rules, the State Executive Committee of each political party shall determine the method and procedures for the selection of county executive committees and the State Executive Committees. The State Executive Committee of the political party shall establish procedures for the selection of county and State Executive Committees at least ninety (90) days before the implementation of the procedures. A copy of any rule or regulation adopted by the State Executive Committee shall be sent to the Secretary of State within seven (7) days after its adoption to become a public record.

**HISTORY:**

Derived from 1972 Code § 23-1-3 [Codes, 1892, §§ 3256, 3257; 1906, § 3699; Hemingway's 1917, § 6390; 1930, § 5866; 1942, § 3107; Laws, 1948, ch. 308; Laws, 1952, ch. 391; Laws, 1963, 1st Ex Sess, ch. 32, § 2; Laws, 1968, ch. 566, § 1; Laws, 1972, ch. 301, § 1; Laws, 1976, ch. 412, § 1; Laws, 1979, ch. 363, § 1; repealed by Laws, 1986, ch. 495, § 331]; en, Laws, 1986, ch. 495, § 311; Laws, 2017, ch. 441, § 163, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment, in the first sentence, substituted "procedures for the selection of county" for "procedures by which county" and deleted "are selected" from the end; and rewrote the second sentence, which read: "The state executive committee of the political party shall establish, at least ninety (90) days prior to the implementation thereof, procedures to be followed in the selection of county executive committees and the state executive committees"; and made minor stylistic changes.

**Cross References —**

Provisions relative to the reconvening of a state convention, see § 23-15-1057.

Provision that the chairman or secretary of the state executive committee of each political party chosen as provided in this section shall register the name of the party it represents, as well as the names of all organizations officially sanctioned by the party, see § 23-15-1059.

Proof of compliance with this section and registration by the chairman or secretary of a district or county executive committee, see § 23-15-1061.

Applicability of this section to political parties registered pursuant to certain provisions of Article 35 of this chapter, see § 23-15-1069.

## JUDICIAL DECISIONS

### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-1-3.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-1-3.**

Although the philosophy of the National Democratic Party may be altruistic in the apportionment of its delegates, there is in reality no possible method or manner by which a state convention through its "grass roots" and precinct levels can select by secret ballot, in a democratic fashion, a proportionate representation of individuals to comply with such a theory. Riddell v. National Democratic Party, 344 F. Supp. 908, 1972 U.S. Dist. LEXIS 12898 (S.D. Miss. 1972), rev'd, 508 F.2d 770, 1975 U.S. App. LEXIS 15984 (5th Cir. Miss. 1975).

The essential aim of Code 1942, §§ 3107, 3107-02, 3107-04 and 3107-06 controlling political party electoral processes is that voters and those who wish to participate have notice of the caucuses and conventions at a fixed time and place, with an unfettered opportunity to participate, free from confusion and intimidation. Riddell v. National Democratic Party, 344 F. Supp. 908, 1972 U.S. Dist. LEXIS 12898 (S.D. Miss. 1972), rev'd, 508 F.2d 770, 1975 U.S. App. LEXIS 15984 (5th Cir. Miss. 1975).

The provisions of this section [Code 1942, § 3107] of a method whereby the state political party conventions may select two slates of presidential electors, one slate pledged to support the nominee of the national political party, and one slate unpledged, offends no provision of the United States Constitution, for this section expressly provides that nothing therein shall prohibit a slate of electors pledged to support the national party candidate from running on the same general election ballot, and Code 1942, § 3260 enables such a slate to get on the ballot upon the petition of 1,000 voters. Gray v. Mississippi, 233 F. Supp. 139, 1964 U.S. Dist. LEXIS 7357 (N.D. Miss. 1964).

This section [Code 1942, § 3107] applies uniformly to all members of the electorate and the one man-one vote principle is in no way violated, and the section does not on its face discriminate among voters or between political parties. Gray v. Mississippi, 233 F. Supp. 139, 1964 U.S. Dist. LEXIS 7357 (N.D. Miss. 1964).

Mississippi voters are not denied the opportunity to vote for electors pledged to support a national party nominee under the provisions of this section [Code 1942, § 3107], but they are denied the opportunity to vote for a pledged slate running under the national party label. Gray v. Mississippi, 233 F. Supp. 139, 1964 U.S. Dist. LEXIS 7357 (N.D. Miss. 1964).

## RESEARCH REFERENCES

**Am. Jur.**
26 Am. Jur. 2d, Elections § 195.

**CJS.**
29 C.J.S., Elections §§ 154-175.

## § 23-15-1054. Methods and procedures for selection of temporary county executive committee.

(1) If there be any political party or parties in any county without a party executive committee, such political party or parties shall select qualified electors of that county and of that party's political faith to serve on a temporary county executive committee until members of a county executive committee are elected at the next regular election for executive committees. The selection of qualified electors to serve on the temporary county executive committee shall occur thirty (30) days before the date for which a candidate for a county office is required to qualify. The temporary county executive committee shall be selected in the following manner: Upon petition of five (5) or more members of

that political faith, the chair of the State Executive Committee desiring to select a temporary county executive committee shall call a mass meeting of the qualified electors of their political faith who reside in the county to meet at some convenient place within the county, at a time to be designated in the call. At the mass convention, the members of that political faith shall select a temporary county executive committee. The temporary county executive committee shall serve until members of a county executive committee are elected at the next regular election for executive committees. The public shall be given notice of the mass meeting as provided in subsection (4) of this section. The chair of the State Executive Committee shall authorize the call within five (5) calendar days of receipt of the petition. If the chair of the State Executive Committee is either incapacitated, unavailable or nonresponsive and does not authorize the mass call within five (5) calendar days of receipt of the petition, any elected officer of the State Executive Committee may authorize the call within five (5) calendar days. If no elected officer of the State Executive Committee acts to approve such petition after an additional five (5) calendar days the petitioners shall be authorized to produce the call.

(2) If no county executive committee is selected or otherwise formed before an election, the State Executive Committee may serve as the temporary county executive committee and exercise all of the duties of the county executive committee for the county election. After a State Executive Committee has fulfilled its duties as the temporary county executive committee, it shall select a county executive committee before the next county election.

(3) A person convicted of a felony in a court of this state, any other state, or of the United States shall be barred from serving as a member of a county executive committee.

(4) The State Executive Committee shall publish a copy of its call for a meeting in some newspaper published in the affected county for three (3) weeks before the date set for the mass convention. If no newspaper is published in the county, then a copy of the call shall be published in a newspaper having general circulation in the county and by posting notices in three (3) public places in the county, one (1) of which shall be the county courthouse or the location where the county board of supervisors meets to conduct business. The publication shall occur not less than three (3) weeks before the date for the mass convention.

**HISTORY:**

Laws, 2011, ch. 509, § 5; Laws, 2017, ch. 441, § 164, eff from and after July 1, 2017.

**Editor's Notes —**

By letter dated July 26, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the addition of this section by Laws of 2011, ch. 509.

**Amendment Notes —**

The 2017 amendment, in (1), rewrote the first sentence, which read: "If there be any political party, or parties, in any county which shall not have a party executive committee for such county, such political party, or parties, shall within thirty (30) days of the date for which a candidate for a county office is required to qualify in such county, select qualified electors of that county and of that party's political faith to serve on a temporary county executive committee until members of a county executive committee are elected at the next regular election for executive committees," added the second sentence, rewrote the former second (now third) sentence, which read: "The temporary county executive committee shall be selected in the following manner: The chairman of the state executive committee of the party desiring to select a temporary county executive committee, upon petition of five (5) or more members of that political faith, shall call a mass meeting of the qualified electors of their political faith who reside in such county to meet at some convenient place within such county, at a time to be designated in the call, and at such mass convention the members of that political faith shall select a temporary county executive committee which shall serve until members of a county executive committee are elected at the next regular election for executive committees," and divided it into the present third through sixth sentences, and in the last sentence, deleted "from the date, the chair of the state executive committee not taking action as provided by this section" following "(5) calendar days," and deleted "themselves" from the end; in (2), rewrote the last sentence, which read: "After a state executive committee has fulfilled its duties as the temporary county executive committee, as soon as practicable thereafter, the state executive committee shall select a county executive committee no later than before the next county election"; rewrote (3) and (4), which read: "(3) A person who has been convicted of a felony in a court of this state or any other state or a court of the United States, shall be barred from serving as a member of a county executive committee. (4) The state executive committee shall publish a copy of its call for a meeting in some newspaper published in the county affected for three (3) weeks preceding the date set for the mass convention, or if there be no newspaper published in the county, then in some newspaper having general circulation in the county and by posting notices in three (3) public places in the county, one (1) of which shall be the county courthouse or the location where the county board of supervisors meets to conduct business not less than three (3) weeks before the date for the mass convention"; and made gender neutral and minor stylistic changes.

## § 23-15-1055. Methods and procedures for selection of delegates and delegate alternates to national nominating conventions.

The state executive committee of each political party shall determine the method and procedures by which delegates and delegate alternates to the national nominating conventions are to be selected as well as adopt any other rule not inconsistent with this chapter. The state executive committee of the political party shall establish, at least ninety (90) days prior to the second Tuesday in March in years in which a presidential election is held, procedures to be followed in the nomination of candidates for delegates and delegate alternates to the nominating convention of the political party. A copy of any rule or regulation adopted by the state executive committee shall be sent to the Secretary of State within seven (7) days after its adoption to become a public record.

**HISTORY:**

Derived from 1972 Code § 23-1-3 [Codes, 1892, §§ 3256, 3257; 1906, § 3699; Hemingway's 1917, § 6390; 1930, § 5866; 1942, § 3107; Laws, 1948, ch. 308; Laws, 1952, ch. 391; Laws, 1963, 1st Ex Sess, ch. 32, § 2; Laws, 1968, ch. 566, § 1; Laws, 1972, ch. 301, § 1; Laws, 1976, ch. 412, § 1; Laws, 1979, ch. 363, § 1; repealed by Laws, 1986, ch. 495, § 331]; and [Laws, 1975, ch. 513; repealed by Laws, 1986, ch. 484, § 15]; en, Laws, 1986, ch. 495, § 312, eff from and after January 1, 1987.

**Cross References —**

Provisions relative to the reconvening of a state convention, see § 23-15-1057.

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 194, 195.

**CJS.**

29 C.J.S., Elections §§ 254–290.

### § 23-15-1057. Reconvening of state convention; delegates, notice, and power and authority.

(1) In the event sufficient cause should arise, and a majority of the membership of the State Executive Committee deems it necessary for the best interest of the political party and the state, the State Executive Committee is authorized to reconvene the state convention that selected them as members of the State Executive Committee at any time after the adjournment of the convention, but not later than the last day of the year in which the convention was held.

(2) The delegates chosen from the respective counties to a state convention in accordance with Section 23-15-1055 shall continue to be delegates from the county to the convention for a period not later than the last day of the year in which the convention was held.

(3) A convention may be reconvened upon the call of the chair of the State Executive Committee only with the approval of a majority of the State Executive Committee. At least ten (10) days notice shall be given by the chair of the State Executive Committee of the reconvening of the state convention. The notice shall be given by publication of the call of the chair in any newspaper or newspapers having general circulation throughout the state.

(4) In the event a state convention is reconvened as provided in this section, the state convention may exercise all the power and authority conferred upon the convention by Section 23-15-1055, and may revise or rescind any action taken at its previous regular session.

**HISTORY:**

Derived from 1972 Code § 23-1-25 [Codes, 1942, § 3107.7; Laws, 1960, ch. 443; repealed by Laws, 1986, ch. 495, § 331]; en, Laws, 1986, ch. 495, § 313; Laws, 2017, ch. 441, § 165, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment designated the formerly undesignated first through fourth paragraphs (1) through (4), respectively; in (1), deleted "The State Executive Committee of a political party selected in the manner provided by Section 23-15-1053" from the beginning and substituted "deems it necessary for the best interest of the political party and the state, the State Executive Committee, is authorized to reconvene" for "deems such to be necessary for the best interest of their political party and the state, are authorized and empowered to reconvene"; in (3), deleted "the chairman to issue said call for a reconvening of a state convention" following "State Executive Committee" the first time it appears, and divided the former last sentence into the present next-to-last and last sentences by substituting "state convention. The notice" for "state convention, such notice"; in (4), substituted "provided in this section, the state" for "herein provided, said state" and deleted "in addition thereto" following "23-15-1055, and"; and made gender neutral and minor stylistic changes.

#### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 194, 195.

**CJS.**

29 C.J.S., Elections §§ 254–290.

### § 23-15-1059. Registration on behalf of state executive committees.

(1) The chair or secretary of the State Executive Committee of each political party chosen as provided in Section 23-15-1053 shall register the name of the political party it represents, and the names of all organizations

officially sanctioned by the political party, with the Secretary of State within thirty (30) days after the political party is organized. Thereafter, no political party shall use or register any name that is the same as or deceptively similar to the name of a political party or officially sanctioned organization that has already been registered with the Secretary of State by any other political party. No political party or officially sanctioned organization shall use any name in any campaign literature listing or describing its candidates that does not correspond with the name of the political party or officially sanctioned organization registered with the Secretary of State.

(2) The chair or secretary of the State Executive Committee of a political party shall update the registration of the name of the political party it represents and the names of all organizations officially sanctioned by the political party with the Secretary of State on an annual basis, disclosing any revisions or additions to the information to be provided by affidavit in accordance with Section 25-15-1061.

**HISTORY:**

Derived from 1972 Code § 23-1-5 [Codes, 1942, § 3107-01; Laws, 1950, ch. 458, § 1; repealed by Laws, 1986, ch. 495, § 331]; en, Laws, 1986, ch. 495, § 314; Laws, 2017, ch. 441, § 166, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment designated the formerly undesignated first and second paragraphs (1) and (2), respectively; in (1), substituted “after the political party is organized” for “after January 1, 1987” at the end of the first sentence; rewrote (2), which read: “Any political party hereafter organized under the laws of this state shall register with the Secretary of State in the manner as herein provided and within thirty (30) days after such organization”; and made gender neutral and minor stylistic changes.

**Cross References —**

Applicability of provisions relative to selection of presidential electors and selection of state and county executive committees to political parties registered pursuant to this section and § 23-15-1061, see § 23-15-1069.

## JUDICIAL DECISIONS

### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-1-5.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-1-5.**

That portion of this statute which grants the political party first to register a particular name the exclusive rights to every part of the name registered is unconstitutional. Riddell v. National Democratic Party, 508 F.2d 770, 1975 U.S. App. LEXIS 15984 (5th Cir. Miss. 1975).

Under this section [Code 1942, § 3107-01] the secretary of state has the power to hear evidence and decide facts and is an inferior tribunal having quasi judicial powers. Hoskins v. Howard, 214 Miss. 481, 59 So. 2d 263, 1952 Miss. LEXIS 492 (Miss. 1952). But see Howard v. Ladner, 116 F. Supp. 783, 1953 U.S. Dist. LEXIS 2307 (D. Miss. 1953), vacated, 347 U.S. 910, 74 S. Ct. 476, 98 L. Ed. 1067, 1954 U.S. LEXIS 2432 (U.S. 1954) (rev’d apparently on jurisdictional grounds in mem op in White v Howard, 347 US 910, 98 L Ed 1067, 74 5 Ct 476, reh’g den’d 347 US 931, 98 L Ed 1083, 74 5 Ct 529), wherein it was held that where a statute which required name of political party to be registered and which also provided that no other political party shall use any name already registered, was construed to deny a political party existing before the passage of the statute the right to continue to use its name because another party has already appropriated that name, this was a denial of due process.

Statute, which provided that when a political party registers no other political party may use that name which has already been registered, as applied, prevents a political party which had used the word Republican in its name for many years, from using this name because another organization had registered the word Republican was not unconstitutional as denying the right to reassemble and petition the government or as depriving members of their liberty and property without due process of law, or as denying right of freedom of speech and of press or as destroying liberty of members of the political party to organize and associate themselves with others for political purposes and as denying for them the right to freely exercise their franchise. Hoskins v. Howard, 214 Miss. 481, 59 So. 2d 263, 1952 Miss. LEXIS 492 (Miss. 1952). But see Howard v. Ladner, 116 F. Supp. 783, 1953 U.S. Dist. LEXIS 2307 (D. Miss. 1953), vacated, 347 U.S. 910, 74 S. Ct. 476, 98 L. Ed. 1067, 1954 U.S. LEXIS 2432 (U.S. 1954) (rev'd apparently on jurisdictional grounds in mem op in White v Howard, 347 US 910, 98 L Ed 1067, 74 S Ct 476, reh'g den'd 347 US 931, 98 L Ed 1083, 74 S Ct 529), wherein it was held that where a statute which required name of political party to be registered and which also provided that no other political party shall use any name already registered, was construed to deny a political party existing before the passage of the statute the right to continue to use its name because another party has already appropriated that name, this was a denial of due process.

## RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 191-193, 196, 197.

**CJS.**

29 C.J.S., Elections §§ 254–263.

## § 23-15-1061. Affidavit to accompany applications for registration; registration on behalf of district and county executive committees; proof of compliance with laws.

(1) The application for registration of the political party and any officially sanctioned organizations named to be presented to the Secretary of State shall be accompanied by an affidavit of the chair or secretary of the political party seeking the registration. The affidavit shall contain a list of the names of the members of the State Executive Committee, showing the chair and secretary, the names of the national committeeman and committeewoman, and the officers of the party, setting forth that the executive committee and other officers of the party have been elected in accordance with the provisions of Section 23-15-1053, or any laws supplementary or amendatory thereof. The Secretary of State is authorized to require further proof as to the compliance with the provisions of Section 23-15-1053 when it is reasonable to do so.

(2) The chair or secretary of the district and county executive committees of each political party, chosen as provided in Section 23-15-1053, shall register the name of the political party it represents with the chair or secretary of the State Executive Committee of that political party within thirty (30) days after December 31, 2017. The application for registration shall be accompanied by an affidavit of the chair or secretary of the party seeking such registration listing the names of the members of the district executive committee and of the State Executive Committee, showing the chair and secretary and other officers of the party, setting forth that the executive committee of the party has been elected in accordance with the provisions of Section 23-15-1053, or any laws supplementary or amendatory thereof. The chair or the secretary of the State Executive Committee is authorized to require further proof of compliance with the provisions of Section 23-15-1053 when it is reasonable to do so. Thereafter, no political party shall use or register any name that is the same as or deceptively similar to the name of a political party or officially sanctioned organization that has already been registered with the chair or secretary of the

State Executive Committee by any other political party. No political party or officially sanctioned organization shall use any name in any campaign literature listing or describing its candidates that does not correspond with the name of the political party or officially sanctioned organization registered with the secretary or chair of the State Executive Committee.

**HISTORY:**

Derived from 1972 Code § 23-1-7 [Codes, 1942, § 3107-02; Laws, 1950, ch. 458, § 2; repealed by Laws, 1986, ch. 495, § 331]; en, Laws, 1986, ch. 495, § 315; Laws, 2017, ch. 441, § 167, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment designated the formerly undesignated first and second paragraphs (1) and (2), respectively; in (1), divided the single-sentence paragraph into three sentences by substituting "seeking the registration. The affidavit shall contain a list of the names" for "seeding such registration listing the names" between the first and second sentences, and "amendatory thereof. The Secretary" for "amendatory thereof, and the Secretary" between the second and third sentences, in the second sentence, deleted "together with" following "chair and secretary," and "all" following "committeewoman," and in the third sentence, substituted "when it is reasonable to do so" for "when in his opinion such party has not complied with same" at the end; in (2), divided the former first sentence into the present first three sentences by substituting "December 31, 2017. The application" for "January 1, 1987, and the application" between the first and second sentences and "amendatory thereof. The" for "amendatory thereof, and the" between the second and third sentences, in the second sentence, deleted "as the case may be" following "State Executive Committee," and in the third sentence, substituted "proof of compliance with the provisions of Section 23-15-1053 when it is reasonable to do so" for "proof as to the compliance with the provisions of said Section 23-15-1053 when in his opinion such party has not complied with same" at the end; and made gender neutral and minor stylistic changes.

**Cross References —**

Applicability of provisions relative to selection of presidential electors and selection of state and county executive committees to political parties registered pursuant to this section and § 23-15-1059, see § 23-15-1069.

## JUDICIAL DECISIONS

### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-1-7.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-1-7.**

Although the philosophy of the National Democratic Party may be altruistic in the apportionment of its delegates, there is in reality no possible method or manner by which a state convention through its "grass roots" and precinct levels can select by secret ballot, in a democratic fashion, a proportionate representation of individuals to comply with such a theory. Riddell v. National Democratic Party, 344 F. Supp. 908, 1972 U.S. Dist. LEXIS 12898 (S.D. Miss. 1972), rev'd, 508 F.2d 770, 1975 U.S. App. LEXIS 15984 (5th Cir. Miss. 1975).

The essential aim of Code 1942, §§ 3107, 3107-02, 3107-04 and 3107-06 controlling political party electoral processes is that voters and those who wish to participate have notice of the caucuses and conventions at a fixed time and place, with an unfettered opportunity to participate, free from confusion and intimidation. Riddell v. National Democratic Party, 344 F. Supp. 908, 1972 U.S. Dist. LEXIS 12898 (S.D. Miss. 1972), rev'd, 508 F.2d 770, 1975 U.S. App. LEXIS 15984 (5th Cir. Miss. 1975).

Under this section [Code 1942, § 3107-02] the secretary of state has the power to hear evidence and decide facts and is an inferior tribunal having quasi judicial powers. Hoskins v. Howard, 214 Miss. 481, 59 So. 2d 263, 1952 Miss. LEXIS 492 (Miss. 1952). But see Howard v. Ladner, 116 F. Supp. 783, 1953 U.S. Dist. LEXIS 2307 (D. Miss. 1953), vacated, 347 U.S. 910, 74 S. Ct. 476, 98 L. Ed. 1067, 1954 U.S. LEXIS 2432 (U.S. 1954) (rev'd apparently on jurisdictional grounds in mem op in White v Howard, 347 US 910, 98 L Ed 1067, 74 5 Ct 476, reh'g den'd 347 US 931, 98 L Ed 1083, 74 5 Ct 529), wherein it was held that where a statute which required name of political party to be registered and which also provided that no other political party shall use any name already registered, was construed to deny a political party existing before the passage of the statute the right to continue to use its name because another party has already appropriated that name, this was a denial of due process.

Where a political organization which for many years had used the word Republican in its name and then changed the name but continued the use of the word Republican and changing of name did not alter organization or membership or officers or representatives of this organization, this name change did not justify a rejection of application for registration under the statutes. Hoskins v. Howard, 214 Miss. 481, 59 So. 2d 263, 1952 Miss. LEXIS 492 (Miss. 1952). But see Howard v. Ladner, 116 F. Supp. 783, 1953 U.S. Dist. LEXIS 2307 (D. Miss. 1953), vacated, 347 U.S. 910, 74 S. Ct. 476, 98 L. Ed. 1067, 1954 U.S. LEXIS 2432 (U.S. 1954) (rev'd apparently on jurisdictional grounds in mem op in White v Howard, 347 US 910, 98 L Ed 1067, 74 5 Ct 476, reh'g den'd 347 US 931, 98 L Ed 1083, 74 5 Ct 529), wherein it was held that where a statute which required name of political party to be registered and which also provided that no other political party shall use any name already registered, was construed to deny a political party existing before the passage of the statute the right to continue to use its name because another party has already appropriated that name, this was a denial of due process.

### RESEARCH REFERENCES

**Am. Jur.**
26 Am. Jur. 2d, Elections §§ 191-193, 196, 197.

**CJS.**
29 C.J.S., Elections §§ 254–263.

## § 23-15-1063. Prohibition against participation in elections or primaries by political parties not duly organized and registered.

No political party in the State of Mississippi shall conduct primaries or enter candidates in any election unless the party has been duly organized under the provisions of this chapter, and the name of the party has been registered as provided in this chapter.

**HISTORY:**
Derived from § 3107-03 [Laws, 1950, ch. 458, § 3; repealed by Laws, 1970, ch. 506, § 33, and 1986, ch. 495, § 345]; en, Laws, 1986, ch. 495, § 316; Laws, 2017, ch. 441, § 168, eff from and after July 1, 2017.

**Amendment Notes —**
The 2017 amendment substituted "the party has been" for "such party shall have been" twice.

### RESEARCH REFERENCES

**Am. Jur.**
26 Am. Jur. 2d, Elections § 196.

**CJS.**
29 C.J.S., Elections §§ 254–263.

## § 23-15-1065. Misrepresentation as to office in, or nomination by, political party; penalties.

A person shall be barred from participating in any primary election held by a political party if that person claims or represents himself or herself in any manner to be a member of any state, district or county executive committee of any political party in this state, or claims to be the national committeeman or national committeewoman or any other officer or representative of the political party without having been lawfully elected or chosen as such in the manner provided by the laws of this state, or by the political party in the manner provided by the laws of this state, or claims to be the nominee of any political party authorized by the laws of this state to hold primary elections and choose party nominees, when in fact such person has not been declared the nominee of such political party for such office by such political party operating under the laws of this state. Any person or persons who violate the provisions of this section, in addition to other measures or penalties provided by law, may be enjoined therefrom upon application to the courts by any person or persons, or any political party, official or representative of the political party aggrieved.

**HISTORY:**

Derived from 1972 Code § 23-1-9 [Codes, 1942, § 3107-04; Laws, 1950, ch. 458, § 4; Laws, 1970, ch. 506, § 1; repealed by Laws, 1986, ch. 495, § 331]; en, Laws, 1986, ch. 495, § 317; Laws, 2017, ch. 441, § 169, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment, in the first sentence, substituted "A person shall be barred from participating in any primary election held by a political party if that person claims" for "If any person shall claim," and "or claims to be the nominee" for "or shall in like manner claim to be the nominee," and deleted "such person shall be barred from participating in any primary election held by such party, and shall not be a candidate, and the name of such person shall not be placed on the ticket as the candidate of such party in any election held in this state" from the end; in the second sentence, substituted "Any person or persons who violate the provisions" for "Any person who violates the provisions" at the beginning; and made gender neutral and minor stylistic changes.

## JUDICIAL DECISIONS

### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-1-9.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-1-9.**

Although the philosophy of the National Democratic Party may be altruistic in the apportionment of its delegates, there is in reality no possible method or manner by which a state convention through its "grass roots" and precinct levels can select by secret ballot, in a democratic fashion, a proportionate representation of individuals to comply with such a theory. Riddell v. National Democratic Party, 344 F. Supp. 908, 1972 U.S. Dist. LEXIS 12898 (S.D. Miss. 1972), rev'd, 508 F.2d 770, 1975 U.S. App. LEXIS 15984 (5th Cir. Miss. 1975).

The essential aim of Code 1942, §§ 3107, 3107-02, 3107-04 and 3107-06 controlling political party electoral processes is that voters and those who wish to participate have notice of the caucuses and conventions at a fixed time and place, with an unfettered opportunity to participate, free from confusion and intimidation. Riddell v. National Democratic Party, 344 F. Supp. 908, 1972 U.S. Dist. LEXIS 12898 (S.D. Miss. 1972), rev'd, 508 F.2d 770, 1975 U.S. App. LEXIS 15984 (5th Cir. Miss. 1975).

## RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 199 et seq.

**CJS.**

29 C.J.S., Elections §§ 293 et seq.

## § 23-15-1067. General prohibitions; injunctions.

It shall be unlawful for any person or group of persons to set up or establish any political party in this state except in the manner provided by the laws of this state, and it shall be unlawful for any person or group of persons not lawful members of a political party to use, attempt to use or to operate under the name of any other political party lawfully existing and operating under the laws of this state. Any person or persons violating this section, in addition to such other measures or penalties provided by law, may be enjoined therefrom upon application to the courts by any person, or persons, or any political party, official or representative of the political party aggrieved.

**HISTORY:**

Derived from 1972 Code § 23-1-11 [Codes, 1942, § 3107-06; Laws, 1950, ch. 458, § 6; repealed by Laws, 1986, ch. 495, § 331]; en, Laws, 1986, ch. 495, § 318; Laws, 2017, ch. 441, § 170, eff from and after July 1, 2017.

**Amendment Notes —**

The 2017 amendment divided the former single-sentence paragraph into two sentences by substituting "laws of this state. Any person or persons violating this section, in addition" for "laws of this state, and each and every person participating in such unlawful act, in addition"; in the first sentence, substituted "members of a political party to use, attempt" for "members thereof to use or attempt," and deleted "theretofore and at the time" following "any other political party"; and made minor stylistic changes.

### JUDICIAL DECISIONS

#### ANALYSIS

1.-5. [Reserved for future use.]
6. Under former Section 23-1-11.

**1.-5. [Reserved for future use.]**

**6. Under former Section 23-1-11.**

The essential aim of Code 1942, Sections 3107, 3107-02, 3107-04 and 3107-06 controlling political party electoral processes is that voters and those who wish to participate have notice of the caucuses and conventions at a fixed time and place, with an unfettered opportunity to participate, free from confusion and intimidation. Riddell v. National Democratic Party, 344 F. Supp. 908, 1972 U.S. Dist. LEXIS 12898 (S.D. Miss. 1972), rev'd, 508 F.2d 770, 1975 U.S. App. LEXIS 15984 (5th Cir. Miss. 1975).

### RESEARCH REFERENCES

**Am. Jur.**

25 Am. Jur. 2d, Elections §§ 191 et seq.

**CJS.**

29 C.J.S., Elections §§ 254–290.

## § 23-15-1069. Provisions applicable to all registered political parties.

The provisions of Sections 23-15-771 and 23-15-1053 shall be applicable to all political parties registered pursuant to Sections 23-15-1059 and 23-15-1061.

**HISTORY:**

Derived from 1972 Code § 23-1-15 [Codes, 1942, § 3107-11; Laws, 1963, 1st Ex Sess ch. 32, § 1; repealed by Laws, 1986, ch. 495, § 331]; en, Laws, 1986, ch. 495, § 319, eff from and after January 1, 1987.

### RESEARCH REFERENCES

**Am. Jur.**

25 Am. Jur. 2d, Elections §§ 191 et seq.

**CJS.**

29 C.J.S., Elections §§ 254–263.

# ARTICLE 37.

# MISSISSIPPI PRESIDENTIAL PREFERENCE PRIMARY AND DELEGATE SELECTION.

Sec.
23-15-1081. Presidential preference primaries; electors to vote in primary of only one party.
23-15-1083. Presidential preference primaries and first congressional primaries to be held on same day; second congressional primaries to be held three weeks thereafter.
23-15-1085. Notice of party's intention to hold presidential preference primary; issuance of proclamation by Secretary of State.
23-15-1087. Applicability of law regulating primary and general elections.

| Sec. | |
|---|---|
| 23-15-1089. | Candidates whose names shall be placed on ballot; announcement of names by Secretary of State. |
| 23-15-1091. | Notification of candidates by Secretary of State. |
| 23-15-1093. | Petition in support of candidacy; qualifying fee. |
| 23-15-1095. | Withdrawal of candidate. |
| 23-15-1097. | Payment of expenses; compensation of election officials. |

## § 23-15-1081. Presidential preference primaries; electors to vote in primary of only one party.

A presidential preference primary may be held on the second Tuesday in March of each year in which a President of the United States is to be elected. Each political party which has cast for its candidates for President and Vice President in the previous presidential election more than twenty percent (20%) of the total vote cast for President and Vice President in the state, may conduct a presidential preference primary. No elector shall vote in the primary of more than one (1) political party in the same presidential preference primary.

**HISTORY:**

Derived from 1972 Code § 23-13-3 [Laws, 1986, ch. 484, § 2; repealed by Laws, 1986, ch. 495, § 348]; en, Laws, 1986, ch. 495, § 320, eff from and after January 1, 1987.

**Cross References —**

Dates on which primary elections for Congressmen shall be held, see §§ 23-15-1031 and 23-15-1083.

Notification of the Secretary of State of a party's intention to hold a presidential preference primary, during the year preceding the one in which such primary may be held pursuant to this section, see § 23-15-1085.

### RESEARCH REFERENCES

**ALR.**

Validity of percentage of vote or similar requirements for participation by political parties in primary elections. 70 A.L.R.2d 1162.

Scheduling election on religious holiday as violation of federal constitutional rights. 44 A.L.R. Fed. 886.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 223-237.

77 Am. Jur. 2d, United States § 17.

**CJS.**

29 C.J.S., Elections §§ 200-235.

**Law Reviews.**

Mississippi Election Code of 1986, 56 Miss L. J. 535, December 1986.

Stavis, A century of struggle for black enfranchisement in Mississippi: From the Civil War to the congressional challenge of 1965-and beyond. 57 Miss. L. J. 591, December, 1987.

Rhodes, Enforcing the Voting Rights Act in Mississippi through litigation. 57 Miss. L. J. 705, December, 1987.

## § 23-15-1083. Presidential preference primaries and first congressional primaries to be held on same day; second congressional primaries to be held three weeks thereafter.

Beginning in 1988, as an alternative to the congressional primary election date set forth in Section 23-15-1031, when a political party elects to conduct a presidential preference primary, the first primary election for congressmen, and senators, if senators are to be elected, shall be held on the second Tuesday in March, and the second primary, when one is necessary, shall be held three

(3) weeks thereafter, and the election shall be held in all districts of the state on the same day.

**HISTORY:**

Derived from 1972 Code § 23-13-5 [Laws, 1986, ch. 484, § 3; repealed by Laws, 1986, ch. 495, § 348]; en, Laws, 1986, ch. 495, § 321, eff from and after January 1, 1987.

**Cross References —**

Issuance by the Secretary of State of a proclamation setting every party's congressional primary elections that are to be held in the year in which a presidential preference primary is to be held on the date provided for in this section, see § 23-15-1085.

**RESEARCH REFERENCES**

**ALR.**

Scheduling election on religious holiday as violation of federal constitutional rights. 44 A.L.R. Fed. 886.

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 223, 224 et seq.

**CJS.**

29 C.J.S., Elections §§ 340–344.

**Law Reviews.**

Mississippi Election Code of 1986, 56 Miss L. J. 535, December 1986.

### § 23-15-1085. Notice of party's intention to hold presidential preference primary; issuance of proclamation by Secretary of State.

The chairman of a party's State Executive Committee shall notify the Secretary of State if the party intends to hold a presidential preference primary. The Secretary of State shall be notified prior to December 1 of the year preceding the year in which a presidential preference primary may be held pursuant to Section 23-15-1081. Upon such notification, the Secretary of State shall issue a proclamation setting every party's congressional and senatorial primary elections that are to be held in the year in which the presidential preference primary is to be held on the date provided for in Section 23-15-1083. Once the Secretary of State has issued a proclamation pursuant to this section, the date of the congressional and senatorial primary elections shall not be changed.

**HISTORY:**

Derived from 1972 Code § 23-13-7 [Laws, 1986, ch. 484, § 4; repealed by Laws, 1986, ch. 495, § 348]; en, Laws, 1986, ch. 495, § 322, eff from and after January 1, 1987.

**RESEARCH REFERENCES**

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 223, 224 et seq.

**CJS.**

29 C.J.S., Elections §§ 340–344.

### § 23-15-1087. Applicability of law regulating primary and general elections.

Except as otherwise provided in this chapter, the laws regulating primary and general elections shall in so far as practical apply to and govern presidential preference primary elections.

**HISTORY:**
Derived from 1972 Code § 23-13-9 [Laws, 1986, ch. 484, § 5; repealed by Laws, 1986, ch. 495, § 348]; en, Laws, 1986, ch. 495, § 323, eff from and after January 1, 1987.

RESEARCH REFERENCES

**Am. Jur.**
26 Am. Jur. 2d, Elections § 225.

**CJS.**
29 C.J.S., Elections §§ 536, 537.

### § 23-15-1089. Candidates whose names shall be placed on ballot; announcement of names by Secretary of State.

The Secretary of State shall place the name of a candidate upon the presidential preference primary ballot when the Secretary of State shall have determined that such a candidate is qualified under Section 23-15-1093.

On or after January 15 immediately preceding a presidential preference primary election the Secretary of State shall publicly announce and distribute to the news media for publication a list of the candidates he intends to place on the ballot at the following presidential preference primary election. Following this announcement he shall not add candidates to his selection, and he shall not delete any candidate whose name appears on the announced list, unless the candidate dies or has withdrawn as a candidate as provided in this chapter.

**HISTORY:**
Derived from 1972 Code § 23-13-11 [Laws, 1986, ch. 484, § 6; repealed by Laws, 1986, ch. 495, § 348]; en, Laws, 1986, ch. 495, § 324; Laws, 2016, ch. 380, § 5, eff from and after July 1, 2016.

**Cross References —**
Notification of a candidate that his name will appear on the ballot in a presidential preference primary election, see § 23-15-1091.

RESEARCH REFERENCES

**Am. Jur.**
26 Am. Jur. 2d, Elections §§ 232-234, 241-248.

**CJS.**
29 C.J.S., Elections §§ 325.

**Law Reviews.**
Mississippi Election Code of 1986, 56 Miss L. J. 535, December 1986.

### § 23-15-1091. Notification of candidates by Secretary of State.

When the Secretary of State places the name of a candidate on the ballot pursuant to Section 23-15-1093, he shall notify the candidate that his name will appear on the ballot of this state in the presidential preference primary election.

The secretary shall also notify the candidate that he may withdraw his name from the ballot by filing with the Secretary of State an affidavit pursuant to Section 23-15-1095 no later than the sixtieth day before that election.

**HISTORY:**
Derived from 1972 Code § 23-13-13 [Laws, 1986, ch. 484, § 7; repealed by Laws, 1986, ch. 495, § 348]; en, Laws, 1986, ch. 495, § 325; Laws, 2016, ch. 380, § 6, eff from and after July 1, 2016.

### RESEARCH REFERENCES

**Am. Jur.**
26 Am. Jur. 2d, Elections §§ 232-234, 241-248.

**CJS.**
29 C.J.S., Elections §§ 325.

## § 23-15-1093. Petition in support of candidacy; qualifying fee.

(1) Any person desiring to have his name placed on the presidential preference primary ballot shall pay a qualifying fee and file the petition or petitions as described in this section.

(2) The amount of the qualifying fee shall be Two Thousand Five Hundred Dollars ($2,500.00). Each independent candidate shall pay the qualifying fee to the Secretary of State. Each political party candidate shall pay the qualifying fee to the state executive committee of the appropriate political party.

(3) A candidate shall file a petition or petitions in support of his candidacy with the state executive committee of the appropriate political party or the Secretary of State, whichever is applicable, after January 1 of the year in which the presidential preference primary is to be held and before January 15 of that same year. To comply with this section, a candidate may file a petition or petitions signed by a total of not less than five hundred (500) qualified electors of the state, or petitions signed by not less than one hundred (100) qualified electors of each congressional district of the state, in which case there shall be a separate petition for each congressional district. The petitions shall be in such form as prescribed by the state executive committee or Secretary of State, whichever is applicable; provided, that there shall be a space for the county of residence of each signer next to the space provided for his signature. No signature may be counted as valid unless the county of residence of the signer is provided. Each petition shall contain an affirmation under the penalties of perjury that each signer is a qualified elector in his congressional district or in the state, as appropriate.

**HISTORY:**
Derived from 1972 Code § 23-13-15 [Laws, 1986, ch. 484, § 8; repealed by Laws, 1986, ch. 495, § 348]; en, Laws, 1986, ch. 495, § 326; Laws, 2016, ch. 380, § 4, eff from and after July 1, 2016.

### JUDICIAL DECISIONS

**1. Due process.**
Political party violated a candidate's due process because, by not timely telling the candidate the party found the candidate's petition to be put on a primary ballot insufficient or timely answering the candidate's request to reconsider, the party gave the candidate no meaningful chance to be heard when the deprivation could be prevented, as the deadline for overseas and military ballots had passed. Wilson v. Hosemann, 185 So. 3d 370, 2016 Miss. LEXIS 95 (Miss. 2016).

### RESEARCH REFERENCES

**Am. Jur.**
26 Am. Jur. 2d, Elections §§ 232-234, 241-248.
9 Am. Jur. Pl & Pr Forms (Rev), Elections, Forms 41-47 (nomination of candidates).

**CJS.**
29 C.J.S., Elections §§ 325.

## § 23-15-1095. Withdrawal of candidate.

A candidate's name shall be printed on the appropriate primary ballot unless he or she submits to the Secretary of State before the printing of the official sample ballot, an affidavit stating without qualification that he or she is not now and does not presently intend to become a candidate for the Office of President of the United States at the upcoming nominating convention of his or her political party. If a candidate withdraws pursuant to this section, the Secretary of State shall notify the state executive committee of the political party of such candidate that the candidate's name will not be placed on the ballot.

**HISTORY:**

Derived from 1972 Code § 23-13-17 [Laws, 1986, ch. 484, § 9; repealed by Laws, 1986, ch. 495, § 348]; en, Laws, 1986, ch. 495, § 327; Laws, 1996, ch. 301, § 3, eff from and after January 25, 1996 (the date the United States Attorney General interposed no objection to the amendment of this section).

**Editor's Notes —**

On January 25, 1996, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1996, ch. 301, § 3.

**Cross References —**

Notification of a candidate that he may withdraw his name from a presidential preference primary election ballot by filing an affidavit with the Secretary of State in accordance with this section, see § 23-15-1091.

### RESEARCH REFERENCES

**Am. Jur.**

26 Am. Jur. 2d, Elections §§ 232-234, 241-248.

**CJS.**

29 C.J.S., Elections §§ 325.

## § 23-15-1097. Payment of expenses; compensation of election officials.

All expenses of the presidential preference primary election, which are authorized expenses, as provided by statute relating to primary or general elections, shall be paid in the same manner as provided by law. Compensation of election officials shall be limited to that which is authorized by statute.

**HISTORY:**

Derived from 1972 Code § 23-13-21 [Laws, 1986, ch. 484, § 11; repealed by Laws, 1986, ch. 495, § 348]; en, Laws, 1986, ch. 495, § 328, eff from and after January 1, 1987.

### RESEARCH REFERENCES

**CJS.**

29 C.J.S., Elections § 200.

# ARTICLE 39.

# REPEAL OF PRIOR ELECTION LAWS.

Sec.
23-15-1111. Repeal of laws in conflict with Chapter 15.

### § 23-15-1111. Repeal of laws in conflict with Chapter 15.

All election laws in conflict with the provisions of this chapter are hereby repealed.

**HISTORY:**

Laws, 1986, ch. 495, § 348, eff from and after January 1, 1987.

# CHAPTER 17.

# AMENDMENTS TO CONSTITUTION BY VOTER INITIATIVE

Sec.
23-17-1. Procedures by which qualified electors may initiate proposed amendments to the constitution.
23-17-3. Time for filing petition; length of time petition remains valid.
23-17-5. Submission of proposed initiative to Attorney General; review; recommendations; certificate of review; filing of proposed initiative and certificate.
23-17-7. Assignment of serial number; designation as "Initiative Measure No. _____."
23-17-8. Correction of certain nonsubstantive clerical or technical errors in the section number reference or designation of a proposed constitutional amendment.
23-17-9. Formulation of ballot title and summary of initiative measure.
23-17-11. Notice of ballot title and summary to initiator; publication of title and summary.
23-17-13. Procedure for appeal of title and summary.
23-17-15. Filing of instrument establishing title and summary of measure; notice to initiator; title and summary to be used in all proceedings.
23-17-17. Initiator of measure to print blank petitions; form of petitions.
23-17-19. Secretary of State to design petitions; form of petitions.
23-17-21. Certification of petition by the circuit clerk; fee for filing petition.
23-17-23. Grounds for refusing to file initiative petition.
23-17-25. Procedure to compel Secretary of State to file petition.
23-17-27. Failure to appeal, or loss of appeal of, Secretary's refusal to file petition.
23-17-29. Filing petition with Legislature; adoption, amendment, or rejection of initiative; placement of initiative on ballot; approval of conflicting initiatives.
23-17-31. Procedure for rejection of measure and adoption of new measure by Legislature; designation of "Alternative Measure No. _____ A"; fiscal analysis.
23-17-33. Ballot title and summary for alternative measures.
23-17-35. Form of initiative measure as appearing on ballot.
23-17-37. Voting for initiative when legislative alternative proposed; form of initiative measure and Legislative alternative as appearing on ballot.
23-17-39. Limit of how many initiative proposals may be submitted to voters on single ballot.
23-17-41. Effective date of initiative which is approved.
23-17-43. Time limit for resubmitting initiative rejected by voters.
23-17-45. Publication of initiatives and Legislative Alternatives; inclusion of arguments or explanation; public hearing; notice of hearing.
23-17-47. Definitions applicable to §§ 23-17-47 through 23-17-59.
23-17-49. Statement of organization of political committees; when to file; contents of statement; changes in statement.
23-17-51. Political committees and certain individuals to file financial reports; when to file; penalties.
23-17-53. Content of financial reports.
23-17-55. Required distance from polling place for distributing or posting material concerning initiative measure.
23-17-57. Unlawful to give or offer consideration to elector.
23-17-59. Unlawful to interfere with or influence vote of elector.
23-17-60. Removal of name from initiative petition due to fraud or coercion.
23-17-61. Penalties for violating §§ 23-17-49 through 23-17-59.

## § 23-17-1. Procedures by which qualified electors may initiate proposed amendments to the constitution.

(1) For purposes of this chapter, the following term shall have the meaning ascribed herein:

"Measure" means an amendment to the Mississippi Constitution proposed by a petition of qualified electors under Section 273, Mississippi Constitution of 1890.

(2) If any qualified elector of the state desires to initiate a proposed amendment to the Constitution of this state as authorized by subsections (3) through (13) of Section 273 of the Mississippi Constitution of 1890, he shall first file with the Secretary of State a typewritten copy of the proposed initiative measure, accompanied by an affidavit that the sponsor is a qualified elector of this state.

(3) The sponsor of an initiative shall identify in the text of the initiative the amount and source of revenue required to implement the initiative. If the initiative requires a reduction in any source of government revenue, or a reallocation of funding from currently funded programs, the sponsor shall identify in the text of the initiative the program or programs whose funding must be reduced or eliminated to implement the initiative.

(4) The person proposing the measure shall also include all the information required under Section 273, Mississippi Constitution of 1890.

**HISTORY:**

Laws, 1993, ch. 514, § 1, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

**Editor's Notes —**

On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

## JUDICIAL DECISIONS

**1. Jurisdiction.**

Sections 23-17-1 et seq. do not divest the Circuit Court of the First Judicial District of Hinds County of its jurisdiction as set forth in section 156 of the Constitution, therefore, this circuit court is the proper venue and has jurisdiction to review the facial constitutionality of proposed initiatives. Stoner v. Mahoney (In re Proposed Initiative Measure No. 20), 2000 Miss. LEXIS 205 (Miss. Sept. 7, 2000), op. withdrawn, sub. op., 774 So. 2d 397, 2000 Miss. LEXIS 268 (Miss. 2000).

## OPINIONS OF THE ATTORNEY GENERAL

The sponsor of an initiative must identify in the text of an initiative the amount and source of revenue required to implement the initiative; if the initiative would reduce government revenues or would require a reduction of funds to programs or a reallocation of funds between programs, then the sponsor must set forth in the text of the initiative exactly which program or programs will be cut back or eliminated, and the sponsor must provide sufficient facts so that the voters are informed as to the effect of the initiative on sources of government revenues and current programs; if the sponsor asserts that no adverse impact will occur in sources of government revenues, the sponsor must establish a rational basis to support such assertion. 2001 Miss. Op. Att'y Gen. 738.

## RESEARCH REFERENCES

**ALR.**

Construction and application of constitutional or statutory provisions expressly excepting certain laws from referendum. 100 A.L.R.2d 314.

**Am. Jur.**

16A Am. Jur. 2d, Constitutional Law § 242.

**CJS.**
16 C.J.S., Constitutional Law, §§ 34- 90, 92-101.

**Lawyers' Edition.**
Constitutionality, under equal protection clause of Fourteenth Amendment, of statutes which require majority approval by different groups of voters before election or referendum results can be certified. 51 L. Ed. 2d 875.

### § 23-17-3. Time for filing petition; length of time petition remains valid.

The petition for a proposed initiative measure must be filed with the Secretary of State not less than ninety (90) days before the first day of the regular session of the Legislature at which it is to be submitted. A petition is valid for a period of twelve (12) months.

**HISTORY:**
Laws, 1993, ch. 514, § 2, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

**Editor's Notes —**
On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

### § 23-17-5. Submission of proposed initiative to Attorney General; review; recommendations; certificate of review; filing of proposed initiative and certificate.

Upon receipt of any proposed initiative measure, the Secretary of State shall submit a copy of the proposed measure to the Attorney General and give notice to the person filing the proposed measure of such transmittal. Upon receipt of the measure, the Attorney General may confer with the person filing the proposed measure and shall within ten (10) working days from receipt thereof review the proposal for matters of form and style, and such matters of substantive import as may be agreeable to the person filing the proposed measure, and shall recommend such revision or alteration of the measure as may be deemed necessary and appropriate. The recommendations of the Attorney General shall be advisory only, and the person filing the proposed measure may accept or reject them in whole or in part. The Attorney General shall issue a certificate of review certifying that he has reviewed the measure for form and style and that the recommendations thereon, if any, have been communicated to the person filing the proposed measure, and such certificate shall issue whether or not the person filing the proposed measure accepts such recommendations. Within fifteen (15) working days after notification of submittal of the proposed initiative measure to the Attorney General, the person filing the proposed measure, if he desires to proceed with his sponsorship, shall file the measure together with the certificate of review with the Secretary of State for assignment of a serial number and the Secretary of State shall thereupon submit to the Attorney General a certified copy of the measure filed. Upon submitting the proposal to the Secretary of State for assignment of a serial number the Secretary of State shall refuse to make such assignment unless the proposal is accompanied by a certificate of review.

**HISTORY:**

Laws, 1993, ch. 514, § 3, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section); Laws, 1998, ch. 546, § 17, eff from and after July 1, 1998.

**Editor's Notes —**

On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

**Cross References —**

Revisor of Statutes, see § 7-5-11.

Secretary of State, with approval of Attorney General, authorized to make nonsubstantive, clerical or technical corrections in the section number reference or designation of proposed constitutional amendment at any time following Attorney General's certificate of review and before ballot is printed, see § 23-17-8.

### OPINIONS OF THE ATTORNEY GENERAL

The intent of this section is that the final text of the proposed initiative and the certificate of review must be filed within the required 15 working days; if such is not done, the initiative is no longer valid and the Secretary of State should not assign the measure a serial number and should not forward same to the Attorney General. 1999 Miss. Op. Att'y Gen. 6.

A municipality, by and through its utility commission, may enter into contracts with parties for use of city property for antennaes, provided that the commission determines, consistent with the facts, that to do so would be in the best interest of the municipality; and, although the city may contract with a third party to solicit and manage/oversee such contracts, the final contracts must be between the city and the users. Flanagan, Jr., 2000 Miss. Op. Att'y Gen. 164.

### RESEARCH REFERENCES

**Am. Jur.**

16 Am. Jur. 2d, Constitutional Law § 28.

## § 23-17-7. Assignment of serial number; designation as "Initiative Measure No. ____."

The Secretary of State shall give a serial number to each initiative measure, and forthwith transmit one (1) copy of the measure proposed bearing its serial number to the Attorney General. Thereafter, a measure shall be known and designated on all petitions, ballots and proceedings as "Initiative Measure No. ________."

**HISTORY:**

Laws, 1993, ch. 514, § 4, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

**Editor's Notes —**

On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

**Cross References —**

Secretary of State, with approval of Attorney General, authorized to make nonsubstantive, clerical or technical corrections in the section number reference or designation of proposed constitutional amendment at any time following Attorney General's certificate of review and before ballot is printed, see § 23-17-8.

## § 23-17-8. Correction of certain nonsubstantive clerical or technical errors in the section number reference or designation of a proposed constitutional amendment.

When an amendment to the Mississippi Constitution of 1890 is proposed to the qualified electors of the state under the voter initiative procedure set forth in Section 23-17-1, et seq., the Secretary of State, with the approval of the Attorney General, may make a nonsubstantive clerical or technical correction in the section number reference or designation of the proposed amendment contained in an initiative measure, as may be appropriate or necessary in order to prevent the use of an existing section number or the possibility of the initiative being declared invalid only because of an error in the section number designation. Such a correction may be made at any time after the Attorney General's certificate of review with regard to the initiative measure has been issued, and before the ballot for the initiative measure is printed. The provisions of this section do not authorize the Secretary of State to make any change other than a nonsubstantive correction in the section number reference or designation of the proposed amendment contained in the initiative measure.

**HISTORY:**

Laws, 2011, ch. 304, § 1, eff July 28, 2011 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the addition of this section).

**Editor's Notes —**

By letter dated July 28, 2011, the United States Attorney General interposed no objection, under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the addition of this section by Laws of 2011, ch. 304.

### § 23-17-9. Formulation of ballot title and summary of initiative measure.

Within seven (7) calendar days after the receipt of an initiative measure, the Attorney General shall formulate and transmit to the Secretary of State a concise statement posed as a question and not to exceed twenty (20) words, bearing the serial number of the measure and a summary of the measure, not to exceed seventy-five (75) words, to follow the statement. The statement shall give a true and impartial statement of the purpose of the measure. Neither the statement nor the summary may intentionally be an argument, nor likely to create prejudice, either for or against the measure. Such concise statement shall constitute the ballot title. The ballot title formulated by the Attorney General shall be the ballot title of the measure unless changed on appeal. When practicable, the question posed by the ballot title shall be written in such a way that an affirmative answer to such question and an affirmative vote on the measure would result in a change in then current law, and a negative answer to the question and a negative vote on the measure would result in no change to then current law.

**HISTORY:**

Laws, 1993, ch. 514, § 5, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

**Editor's Notes —**

On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

**Cross References —**

Appeal of ballot title and summary, see § 23-17-13.

Application of this section to formulation of ballot title and summary of legislative alternative measure, see § 23-17-33.

Secretary of State, with approval of Attorney General, authorized to make nonsubstantive, clerical or technical corrections in the section number reference or designation of proposed constitutional amendment at any time following Attorney General's certificate of review and before ballot is printed, see § 23-17-8.

## § 23-17-11. Notice of ballot title and summary to initiator; publication of title and summary.

Upon the filing of the ballot title and summary for an initiative measure in his office, the Secretary of State shall forthwith notify by certified mail return receipt requested, the person proposing the measure and any other individuals who have made written request for such notification of the exact language of the ballot title. The Secretary of State shall publish the title and summary for an initiative measure within ten (10) days after filing such title and summary in a newspaper or newspapers of general circulation throughout the State of Mississippi.

**HISTORY:**

Laws, 1993, ch. 514, § 6, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

**Editor's Notes —**

On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

**Cross References —**

Secretary of State, with approval of Attorney General, authorized to make nonsubstantive, clerical or technical corrections in the section number reference or designation of proposed constitutional amendment at any time following Attorney General's certificate of review and before ballot is printed, see § 23-17-8.

### RESEARCH REFERENCES

**Am. Jur.**

16 Am. Jur. 2d, Constitutional Law § 32.

## § 23-17-13. Procedure for appeal of title and summary.

If any person is dissatisfied with the ballot title or summary formulated by the Attorney General, he or she may, within five (5) days from the publications of the ballot title and summary by the office of the Secretary of State, appeal to the circuit court of the First Judicial District of Hinds County by petition setting forth the measure, the title or summary formulated by the Attorney General, and his or her objections to the ballot title or summary and requesting amendment of the title or summary by the court.

A copy of the petition on appeal together with a notice that an appeal has been taken shall be served upon the Secretary of State, upon the Attorney General and upon the person proposing the measure if the appeal is initiated by someone other than that person. Upon the filing of the petition on appeal or at the time to which the hearing may be adjourned by consent of the appellant, the court shall accord first priority to examining the proposed measure, the title or summary prepared by the Attorney General and the objections to that title or summary. The court may hear arguments, and, within ten (10) days, shall render its decision and file with the Secretary of State a certified copy of such ballot title or summary as it determines will meet the requirements of Section 23-17-9. The decision of the court shall be final.

**HISTORY:**

Laws, 1993, ch. 514, § 7, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

**Editor's Notes —**

On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

### JUDICIAL DECISIONS

#### ANALYSIS

1. Jurisdiction.
2. Relationship to other law.
3. Right to appeal.

**1. Jurisdiction.**

Supreme Court of Mississippi holds Miss. Code Ann. § 23-17-13 (Rev. 2007) only provides a mechanism to appeal ballot titles formulated by the Attorney General for Miss. Code Ann. § 23-17-1(1) ballot measures (those proposed via petition of qualified electors); it provides no mechanism for and does not authorize any court to entertain appeals of ballot titles written for amendments to measures proposed by the Legislature pursuant to Miss. Code Ann. § 23-17-31 (Rev. 2007). Legis. of the State of Miss. v. Shipman, 170 So. 3d 1211, 2015 Miss. LEXIS 416 (Miss. 2015).

Section 23-17-13 deals merely with the Legislature's authority to direct venue, not jurisdiction; thus, the statute does not divest the Circuit Court of the First Judicial District of Hinds County of its jurisdiction as set forth in section 156 of the Constitution. In re Proposed Initiative Measure No. 20 v. Mahoney, 774 So. 2d 397, 2000 Miss. LEXIS 268 (Miss. 2000), superseded, Stoner v. Mahoney (In re Proposed Initiative Measure No. 20), 2000 Miss. LEXIS 205 (Miss. Sept. 7, 2000), overruled in part, Speed v. Hosemann, 68 So. 3d 1278, 2011 Miss. LEXIS 429 (Miss. 2011), overruled in part, Hughes v. Hosemann, 68 So. 3d 1260, 2011 Miss. LEXIS 436 (Miss. 2011).

**2. Relationship to other law.**

Notice provisions of Miss. Code Ann. § 23-17-13 (Rev. 2007) have no effect upon the appeal of a ballot title drafted by the Attorney General for an amendment to a measure. Legis. of the State of Miss. v. Shipman, 170 So. 3d 1211, 2015 Miss. LEXIS 416 (Miss. 2015).

**3. Right to appeal.**

No right to appeal is created by Miss. Code Ann. § 23-17-33 (Rev. 2007)'s citation to Miss. Code Ann. § 23-17-9 (Rev. 2007). Legis. of the State of Miss. v. Shipman, 170 So. 3d 1211, 2015 Miss. LEXIS 416 (Miss. 2015).

## § 23-17-15. Filing of instrument establishing title and summary of measure; notice to initiator; title and summary to be used in all proceedings.

When the ballot title and summary are finally established, the Secretary of State shall file the instrument establishing it with the proposed measure and transmit a copy thereof by certified mail return receipt requested, to the person proposing the measure and to any other individuals who have made written request for such notification. Thereafter such ballot title shall be the title of the measure in all petitions, ballots and other proceedings in relation thereto. The summary shall appear on all petitions directly following the ballot title.

**HISTORY:**

Laws, 1993, ch. 514, § 8, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

**Editor's Notes —**

On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

### OPINIONS OF THE ATTORNEY GENERAL

The 12-month period for the collection of petitions for an initiative began to run on the date the proponent of the initiative received from the Secretary of State a court order amending the ballot title and summary for the proposed initiative and "finally establishing" same, rather than the earlier date on which the proponent received the original ballot title and ballot summary or the later date on which the appeal of the court order was dismissed. 2001 Miss. Op. Att'y Gen. 586.

## § 23-17-17. Initiator of measure to print blank petitions; form of petitions.

(1) The person proposing an initiative measure shall print blank petitions upon single sheets of paper of good writing quality not less than eight and one-half (8 ½) inches in width and not less than fourteen (14) inches in length. Each sheet shall have a full, true and correct copy of the proposed measure referred to therein printed on the reverse side of the petition or attached thereto.

(2) Only a person who is a qualified elector of this state may circulate a petition or obtain signatures on a petition.

**HISTORY:**

Laws, 1993, ch. 514, § 9; Laws, 1996, ch. 444, § 1, eff from and after June 28, 1996 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

On June 28, 1996 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1996, ch. 444.

**Cross References —**

Additional requirements for form of petition, see § 23-17-19.

### JUDICIAL DECISIONS

**1. Validity.**

Statutes requiring that initiative petition circulators be qualified electors of State and prohibiting per-signature payment of circulators violated First Amendment; there was evidence that payment of primarily out-of-state circulators, who would only work on payment-per-signature basis, was most effective and economical avenue of political communication, and State failed to prove fraud or actual threat to citizens' confidence in government from per-signature payment, or to demonstrate any reasonable justification for permitting signature gathering only by voters registered in State. Term Limits Leadership Council v. Clark, 984 F. Supp. 470, 1997 U.S. Dist. LEXIS 19485 (S.D. Miss. 1997).

## § 23-17-19. Secretary of State to design petitions; form of petitions.

The Secretary of State shall design the form each sheet of which shall contain the following:

"WARNING

EVERY PERSON WHO SIGNS THIS PETITION WITH ANY OTHER THAN HIS OR HER TRUE NAME, KNOWINGLY SIGNS MORE THAN ONE OF THESE PETITIONS RELATING TO THE SAME INITIATIVE MEASURE, SIGNS THIS PETITION WHEN HE OR SHE IS NOT A QUALIFIED ELECTOR OR MAKES ANY FALSE STATEMENT ON THIS PETITION MAY BE PUNISHED BY FINE, IMPRISONMENT, OR BOTH.

**PETITION FOR INITIATIVE MEASURE**

To the Honorable ________, Secretary of State of the State of Mississippi:

We, the undersigned citizens and qualified electors of the State of Mississippi, respectfully direct that this petition and the proposed measure known as Initiative Measure No. ________, entitled (here insert the established ballot title of the measure), a full, true and correct copy of which is printed or attached on the reverse side of this petition, be transmitted to the Legislature of the State of Mississippi at its next ensuing regular session, and we respectfully petition the Legislature to adopt the proposed measure; and each of us for himself or herself says: I have personally signed this petition, I am a qualified elector of the State of Mississippi in the city (or town), county and congressional district written after my name, my residence address is correctly stated and I have knowingly signed this petition only once."

Each sheet shall also provide adequate space for the following information: Petitioner's signature; print name for positive identification; residence address, street and number, if any; city or town; county; precinct; and congressional district.

**HISTORY:**

Laws, 1993, ch. 514, § 10, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

**Editor's Notes —**

On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

**Cross References —**

Failure of petition to be in form required by this section as grounds for refusing to file initiative petition, see § 23-17-13.

Additional requirements for form of petition, see § 23-17-17.

### § 23-17-21. Certification of petition by the circuit clerk; fee for filing petition.

Before a person may file a petition with the Secretary of State, the petition must be certified by the circuit clerk of each county in which the petition was circulated. The circuit clerk shall certify the signatures of qualified electors of that county and shall state the total number of qualified electors signing the petition in that county. The circuit clerk shall verify the name of each qualified elector signing on each petition. A circuit clerk may not receive any fee, salary or compensation from any private person or private legal entity for the clerk's duties in certifying an initiative petition. When the person proposing any initiative measure has secured upon the petition a number of signatures of qualified electors equal to or exceeding the minimum number required by Section 273(3) of the Mississippi Constitution of 1890 for the proposed measure, and such signatures have been certified by the circuit clerks of the various counties, he may submit the petition to the Secretary of State for filing. The Secretary of State shall collect a fee of Five Hundred Dollars ($500.00) from the person filing the petition to pay part of the administrative and publication costs.

**HISTORY:**

Laws, 1993, ch. 514, § 11; Laws, 1996, ch. 444, § 4, eff from and after June 28, 1996 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

On June 28, 1996 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1996, ch. 444.

## § 23-17-23. Grounds for refusing to file initiative petition.

The Secretary of State shall refuse to file any initiative petition being submitted upon any of the following grounds:

(a) That the petition is not in the form required by Section 23-17-19;

(b) That the petition clearly bears insufficient signatures;

(c) That one or more signatures appearing on the petition were obtained in violation of Section 23-17-17(2), Section 23-17-57(2) or Section 23-17-57(3);

(d) That the time within which the petition may be filed has expired; or

(e) That the petition is not accompanied by the filing fee provided for in Section 23-17-21.

In case of such refusal, the Secretary of State shall endorse on the petition the word "submitted" and the date, and retain the petition pending appeal.

If none of the grounds for refusal exists, the Secretary of State shall accept and file the petition.

**HISTORY:**

Laws, 1993, ch. 514, § 12; Laws, 1996, ch. 444, § 3, eff from and after June 28, 1996 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

On June 28, 1996 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1996, ch. 444.

### JUDICIAL DECISIONS

**ANALYSIS**

1. Validity.
2. Review of initiatives.

**1. Validity.**

Statutes requiring that initiative petition circulators be qualified electors of State and prohibiting per-signature payment of circulators violated First Amendment; there was evidence that payment of primarily out-of-state circulators, who would only work on payment-per-signature basis, was most effective and economical avenue of political communication, and State failed to prove fraud or actual threat to citizens' confidence in government from per-signature payment, or to demonstrate any reasonable justification for permitting signature gathering only by voters registered in State. Term Limits Leadership Council v. Clark, 984 F. Supp. 470, 1997 U.S. Dist. LEXIS 19485 (S.D. Miss. 1997).

**2. Review of initiatives.**

Proposed initiatives are subject to review of form and, therefore, content inasmuch as content affects form and form affects content. Initiatives must meet minimum constitutional and statutory requirements prior to being placed on the ballot to ensure full disclosure and notice to the electorate. Stoner v. Mahoney (In re Proposed Initiative Measure No. 20), 2000 Miss. LEXIS 205 (Miss. Sept. 7, 2000), op. withdrawn, sub. op., 774 So. 2d 397, 2000 Miss. LEXIS 268 (Miss. 2000).

## § 23-17-25. Procedure to compel Secretary of State to file petition.

If the Secretary of State refuses to file an initiative petition when submitted to him for filing, the person submitting it for filing, within ten (10) days after his refusal, may apply to the Supreme Court for an order requiring the Secretary of State to bring the petition before the court and for a writ of mandamus to compel him to file it. The application shall be considered an emergency matter of public concern and shall be heard and determined with all convenient speed. If the Supreme Court decides that the petition is legal in form, apparently contains the requisite number of signatures of qualified electors, was filed within the time prescribed in the Constitution and was accompanied with the proper filing fee, it shall issue its mandate directing the Secretary of State to file the petition in his office as of the date of submission.

**HISTORY:**

Laws, 1993, ch. 514, § 13, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

**Editor's Notes —**

On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

## § 23-17-27. Failure to appeal, or loss of appeal of, Secretary's refusal to file petition.

If no appeal is taken from the refusal of the Secretary of State to file a petition within the time prescribed, or if an appeal is taken and the Secretary of State is not required to file the petition by the mandate of the Supreme Court, the Secretary of State shall destroy it.

**HISTORY:**

Laws, 1993, ch. 514, § 14, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

**Editor's Notes —**

On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

### § 23-17-29. Filing petition with Legislature; adoption, amendment, or rejection of initiative; placement of initiative on ballot; approval of conflicting initiatives.

The Secretary of State shall file with the Clerk of the House and the Secretary of the Senate on the first day of the regular legislative session the complete text of each initiative for which a petition has been certified and filed with him. A constitutional initiative may be adopted or amended by a majority vote of each house of the Legislature. If the initiative is adopted, amended or rejected by the Legislature; or if no action is taken within four (4) months of the date that the initiative is filed with the Legislature, the Secretary of State shall place the initiative on the ballot for the next statewide general election. If the Legislature amends an initiative, the amended version and the original initiative shall be submitted to the electors. An initiative or legislative alternative must receive a majority of the votes thereon and not less than forty percent (40%) of the total votes cast at the election at which the measure was submitted to be approved. If conflicting initiatives or legislative alternatives are approved at the same election, the initiative or legislative alternative receiving the highest number of affirmative votes shall prevail.

**HISTORY:**

Laws, 1993, ch. 514, § 15, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

**Editor's Notes —**

On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

### § 23-17-31. Procedure for rejection of measure and adoption of new measure by Legislature; designation of "Alternative Measure No. ____ A"; fiscal analysis.

(1) Whenever the Legislature rejects a measure submitted to it by initiative petition and adopts an amendment to the measure proposed by initiative petition, then the Secretary of State shall give the measure adopted by the Legislature the same number as that borne by the initiative measure followed by the letter "A." Such measure so designated as "Alternative Measure No. ________ A," together with the ballot title thereof, when ascertained, shall be certified by the Secretary of State to the county election commissioners for printing on the ballots for submission to the voters for their approval or rejection at the next statewide general election.

(2) The chief legislative budget officer shall prepare a fiscal analysis of each initiative and each legislative alternative. A summary of each fiscal analysis shall appear on the ballot.

**HISTORY:**

Laws, 1993, ch. 514, § 16, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

**Editor's Notes —**

On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

### § 23-17-33. Ballot title and summary for alternative measures.

For a measure designated by him as "Alternative Measure No. _______ A," the Secretary of State shall obtain from the Attorney General a ballot title in the manner provided by Section 23-17-9. The ballot title therefor shall be different from the ballot title of the measure in lieu of which it is proposed, and shall indicate, as clearly as possible, the essential differences in the measure.

**HISTORY:**

Laws, 1993, ch. 514, § 17, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

**Editor's Notes —**

On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

### § 23-17-35. Form of initiative measure as appearing on ballot.

Except in the case of alternative voting on a measure initiated by petition, each measure submitted to the people for approval or rejection shall be so printed on the ballot, under the proper heading, that a voter can, by making one (1) choice, express his approval or rejection of such measure. Substantially the following form shall be a compliance with this section:

INITIATIVE MEASURE NO. _______

(Here insert the ballot title of the measure.)

YES .................................................................. ( )
NO .................................................................... ( )

**HISTORY:**

Laws, 1993, ch. 514, § 18, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

**Editor's Notes —**

On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

**RESEARCH REFERENCES**

**Am. Jur.**

16 Am. Jur. 2d, Constitutional Law §§ 23-25, 33-38.

### § 23-17-37. Voting for initiative when legislative alternative proposed; form of initiative measure and Legislative alternative as appearing on ballot.

If an initiative measure proposed to the Legislature has been rejected by the Legislature and an alternative measure is passed by the Legislature in lieu thereof, the serial numbers and ballot titles of both such measures shall be printed on the official ballots so that a voter can express separately two (2) preferences: First, by voting for the approval of either measure or against both measures, and, secondly, by voting for one measure or the other measure. If the majority of those voting on the first issue is against both measures, then both measures fail, but in that case the votes on the second issue nevertheless shall be carefully counted and made public. If a majority voting on the first issue is for the approval of either measure, then the measure receiving a majority of the votes on the second issue and also receiving not less than forty percent (40%) of the total votes cast at the election at which the measure was submitted for approval shall be law. Any person who votes against both measures on the first issue may vote but shall not be required to vote for any of the measures on the second issue in order for the ballot to be valid. Substantially the following form shall be a compliance with this section:

INITIATED BY PETITION AND ALTERNATIVE BY LEGISLATURE

Initiative Measure No. ________, entitled (here insert the ballot title of the initiative measure).

Alternative Measure No. ________ A, entitled (here insert the ballot title of the alternative measure).

VOTE FOR APPROVAL OF EITHER, OR AGAINST BOTH:

FOR APPROVAL OF EITHER Initiative No. ________
OR Alternative No. ________ A .............................................. (  )
AGAINST BOTH initiative No. ________
AND Alternative No. ________ A ............................................ (  )
AND VOTE FOR ONE:
FOR Initiative Measure No. ________ ..................................... (  )
FOR Alternative Measure No. ________ A ................................ (  )

**HISTORY:**

Laws, 1993, ch. 514, § 19, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

**Editor's Notes —**

On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

## § 23-17-39. Limit of how many initiative proposals may be submitted to voters on single ballot.

No more than five (5) initiative proposals shall be submitted to the voters on a single ballot, and the first five (5) initiative proposals submitted to the Secretary of State with sufficient petitions shall be the proposals which are submitted to the voters.

**HISTORY:**

Laws, 1993, ch. 514, § 20, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

**Editor's Notes —**

On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

## § 23-17-41. Effective date of initiative which is approved.

An initiative approved by the electors shall take effect thirty (30) days from the date of the official declaration of the vote by the Secretary of State, unless the measure provides otherwise.

**HISTORY:**

Laws, 1993, ch. 514, § 21, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

**Editor's Notes —**

On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

### § 23-17-43. Time limit for resubmitting initiative rejected by voters.

If any amendment to the Constitution proposed by initiative petition is rejected by a majority of the qualified electors voting thereon, no initiative petition proposing the same, or substantially the same, amendment shall be submitted to the electors for at least two (2) years after the date of the election on such amendment.

**HISTORY:**

Laws, 1993, ch. 514, § 22, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

**Editor's Notes —**

On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

### § 23-17-45. Publication of initiatives and Legislative Alternatives; inclusion of arguments or explanation; public hearing; notice of hearing.

(1) A pamphlet containing a copy of all initiative measures and legislative alternatives, including the ballot title and ballot summary, arguments or explanations for and against each measure and alternative and the fiscal analysis prepared by the chief legislative budget officer shall be compiled by the Secretary of State. The sponsor may prepare the argument or explanation on the measure. If the sponsor does not prepare the argument or explanation, then the Secretary of State shall do so. Each argument or explanation shall not exceed three hundred (300) words. The Secretary of State shall publish the ballot title, ballot summary, full text of each measure and arguments or explanations for and against each measure and alternative once a week for three (3) consecutive weeks immediately preceding the election in at least one (1) newspaper of general circulation in each county of the state. The costs of such printing and publication shall be borne by the Secretary of State from funds appropriated by the Legislature.

(2) The Secretary of State shall conduct at least one (1) public hearing in each congressional district on each measure to be placed on the ballot and shall give public notice thereof at least thirty (30) days before a hearing.

**HISTORY:**

Laws, 1993, ch. 514, § 23, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

**Editor's Notes —**

On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

### § 23-17-47. Definitions applicable to §§ 23-17-47 through 23-17-59.

For the purposes of Sections 23-17-47 through 23-17-59, the following terms shall have the meanings ascribed to them in this section:

(a) "Contribution" means any gift, subscription, loan, advance, money or anything of value made by a person or political committee for the purpose of influencing the passage or defeat of a measure on the ballot, for the purpose of obtaining signatures for the proposed ballot measures and attempting to place the proposed measure on the ballot, and for the purpose of opposing efforts to place a proposed measure on the ballot; but does not include noncompensated, nonreimbursed volunteer personal services.

(b) "Person" means any individual, family, firm, corporation, partnership, association or other legal entity.

(c) "Political committee" means any person, other than an individual, who receives contributions or makes expenditures for the purpose of influencing the passage or defeat of a measure on the ballot.

(d) "Expenditure" means any purchase, payment, distribution, loan, advance, deposit, gift of money or anything of value, made by any person or political committee for the purpose of influencing any balloted measure, for the purpose of obtaining signatures for a proposed ballot measure and attempting to place the proposed measure on the ballot, and for the purpose of opposing efforts to place a proposed measure on the ballot.

**HISTORY:**

Laws, 1993, ch. 514, § 24; Laws, 1999, ch. 301, § 17, eff from and after January 15, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 301, § 17.

### § 23-17-49. Statement of organization of political committees; when to file; contents of statement; changes in statement.

(1) Each political committee shall file with the Secretary of State a statement of organization no later than ten (10) days after receipt of contributions aggregating in excess of Two Hundred Dollars ($200.00), or no later than ten (10) days after having made expenditures aggregating in excess of Two Hundred Dollars ($200.00).

(2) The statement of organization of a political committee must include:

(a) The name and address of the committee and all officers;

(b) Designation of a director of the committee and a custodian of books and accounts of the committee, who shall be designated treasurer; and

(c) A brief statement identifying the measure that the committee seeks to pass or defeat.

Any change in information previously submitted in a statement of organization shall be reported and filed within ten (10) days.

**HISTORY:**

Laws, 1993, ch. 514, § 25, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

**Editor's Notes —**

On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

**Cross References —**

Definitions applicable to this section, see § 23-17-47.

Penalties for violations of this section, see § 23-17-61.

### § 23-17-51. Political committees and certain individuals to file financial reports; when to file; penalties.

(1) A political committee that either receives contributions or makes expenditures in excess of Two Hundred Dollars ($200.00) shall file financial reports with the Secretary of State.

(2) An individual person who on his or her own behalf expends in excess of Two Hundred Dollars ($200.00) for the purpose of influencing the passage or defeat of a measure shall file financial reports with the Secretary of State.

(3) The financial reports required in this section shall be filed monthly, not later than the tenth day of the month following the month being reported, after a political committee or an individual exceeds the contribution or expenditure limits. Financial reports must continue to be filed until all contributions and expenditures cease. In all cases a financial report shall be filed thirty (30) days following the election on a measure.

(4) Any person, who violates the provisions of this section, shall be subject to a fine as provided in Section 23-15-813.

**HISTORY:**

Laws, 1993, ch. 514, § 26; Laws, 1999, ch. 301, § 18, eff from and after January 15, 1999 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

Laws of 1999, ch. 301, was House Bill 1609, 1998 Regular Session, and originally passed both Houses of the Legislature on April 3, 1998. The Governor vetoed House Bill 1609 on April 17, 1998. The veto was overridden by the State Senate and House of Representatives on January 5, 1999.

On January 15, 1999, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the amendment of this section by Laws of 1999, ch. 301, § 18.

**Cross References —**

Definitions applicable to this section, see § 23-17-47.

Contents of report required by this section, see § 23-17-53.

Penalties for violations of this section, see § 23-17-61.

**Comparable Laws from other States —**

Alabama Code, §§ 17-5-1 et seq. and 36-25-6.

Arkansas Code Annotated, §§ 7-6-201 through 7-6-227.

Georgia Code Annotated, §§ 21-5-30 et seq.

Louisiana Revised Statutes Annotated, §§ 18:1481 et seq.

Tennessee Code Annotated, §§ 2-10-101 et seq.

Texas Election Code, §§ 251.001 et seq., 258.001 et seq.

**Federal Aspects—**

Federal election campaigns – disclosure of federal campaign funds, see 522 USCS §§ 30101 et seq.

Federal election campaigns – general provisions, see 52 USCS §§ 30141 et seq.

## JUDICIAL DECISIONS

**1. Constitutionality.**

Applying exacting scrutiny, Mississippi's disclosure laws related to constitutional amendments survived a facial First Amendment challenge where the registration burdens were minimal and those registration burdens were central to the disclosure scheme and proportional to its relatively small population. Justice v. Hosemann, 771 F.3d 285, 2014 U.S. App. LEXIS 21735 (5th Cir. Miss. 2014), cert. denied, — U.S. —, 136 S. Ct. 1514, 194 L. Ed. 2d 603, 2016 U.S. LEXIS 2404 (U.S. 2016).

## RESEARCH REFERENCES

**ALR.**

Validity and construction of testamentary gift to political party. 41 A.L.R.3d 883.

Power of corporations to make political contributions or expenditures under state law. 79 A.L.R.3d 491.

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 A.L.R.3d 944.

**Am. Jur.**

16A Am. Jur. 2d, Constitutional Law §§ 603-606.

26 Am. Jur. 2d, Elections §§ 356, 357, 459, 464.

15A Am. Jur. Legal Forms 2d, Public Officers § 213.26 (statement of election contributions and expenses).

## § 23-17-53. Content of financial reports.

A financial report of a political committee, or an individual person, as required by Section 23-17-51, shall contain the following information:

(a) The name, address and telephone number of the committee or individual person filing the statement.

(b) For a political committee:

(i) The total amount of contributions received during the period covered by the financial report;

(ii) The total amount of expenditures made during the period covered by the financial report;

(iii) The cumulative amount of those totals for each measure;

(iv) The balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the financial report;

(v) The total amount of contributions received during the period covered by the financial report from persons who contributed Two Hundred Dollars ($200.00) or less, and the cumulative amount of that total for each measure;

(vi) The total amount of contributions received during the period covered by the financial report from persons who contributed Two Hundred Dollars ($200.00) or more, and the cumulative amount of that total for each measure; and

(vii) The name and street address of each person from whom a contribution(s) exceeding Two Hundred Dollars ($200.00) was received during the period covered by the financial report, together with the amount contributed, the date of receipt, and the cumulative amount contributed by that person for each measure.

(c) For an individual person:

(i) The total amount of expenditures made during the period covered by the financial report;

(ii) The cumulative amount of that total for each measure; and

(iii) The name and street address of each person to whom expenditures totaling Two Hundred Dollars ($200.00) or more were made, together with the amount of each separate expenditure to each person during the period covered by the financial report and the purpose of the expenditure.

(iv) The total amount of contributions received during the period covered by the financial report, the cumulative amount of that total for each measure, and the name and street address of each person who contributed more than Two Hundred Dollars ($200.00) and the amount contributed.

**HISTORY:**

Laws, 1993, ch. 514, § 27, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

**Editor's Notes —**

On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

**Cross References —**

Definitions applicable to this section, see § 23-17-47.

Penalties for violations of this section, see § 23-17-61.

## JUDICIAL DECISIONS

**1. Constitutionality.**

Applying exacting scrutiny, Mississippi's disclosure laws related to constitutional amendments survived a facial First Amendment challenge where the registration burdens were minimal and those registration burdens were central to the disclosure scheme and proportional to its relatively small population. Justice v. Hosemann, 771 F.3d 285, 2014 U.S. App. LEXIS 21735 (5th Cir. Miss. 2014), cert. denied, — U.S. —, 136 S. Ct. 1514, 194 L. Ed. 2d 603, 2016 U.S. LEXIS 2404 (U.S. 2016).

## RESEARCH REFERENCES

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State regulation of the giving or making of political contributions or expenditures by private individuals. 94 A.L.R.3d 944.

**Am. Jur.**

16A Am. Jur. 2d, Constitutional Law §§ 603-606.

26 Am. Jur. 2d, Elections §§ 356, 357, 459, 461.

15A Am. Jur. Legal Forms 2d, Public Officers § 213.26 (statement of election contributions and expenses).

## § 23-17-55. Required distance from polling place for distributing or posting material concerning initiative measure.

It is unlawful for any person to distribute or post material in support of or in opposition to a measure within one hundred fifty (150) feet of any entrance to a polling place where the election is held.

**HISTORY:**

Laws, 1993, ch. 514, § 28, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

**Editor's Notes —**

On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

**Cross References —**

Definitions applicable to this section, see § 23-17-47.

Penalties for violations of this section, see § 23-17-61.

## § 23-17-57. Unlawful to give or offer consideration to elector.

(1) It is unlawful for a person to give or offer any consideration to an elector to induce the elector to vote for or against a measure.

(2) It is unlawful for a person to give or offer any consideration to an elector to induce the elector to sign or not sign a petition for a measure.

(3) It is unlawful for any person that pays or compensates another person for circulating a petition or for obtaining signatures on a petition to base the pay or compensation on the number of petitions circulated or the number of signatures obtained.

(4) It is unlawful for any person to solicit signatures on any petition under this chapter within one hundred fifty (150) feet of any polling place on any election day.

(5) It is unlawful for any person who circulates or causes to be circulated an initiative petition to obtain or attempt to obtain a person's signature (a) by intentionally misleading such person as to the substance or effect of the petition, or (b) by intentionally causing such person to be misled as to the substance or effect of the petition.

**HISTORY:**

Laws, 1993, ch. 514, § 29; Laws, 1996, ch. 444, § 2, eff from and after June 28, 1996 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

On June 28, 1996 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the amendment of this section by Laws of 1996, ch. 444.

**Cross References —**

Definitions applicable to this section, see § 23-17-47.

Penalties for violations of this section, see § 23-17-61.

### JUDICIAL DECISIONS

**1. Validity.**

Statutes requiring that initiative petition circulators be qualified electors of State and prohibiting per-signature payment of circulators violated First Amendment; there was evidence that payment of primarily out-of-state circulators, who would only work on payment-per-signature basis, was most effective and economical avenue of political communication, and State failed to prove fraud or actual threat to citizens' confidence in government from per-signature payment, or to demonstrate any reasonable justification for permitting signature gathering only by voters registered in State. Term Limits Leadership Council v. Clark, 984 F. Supp. 470, 1997 U.S. Dist. LEXIS 19485 (S.D. Miss. 1997).

### OPINIONS OF THE ATTORNEY GENERAL

People gathering signatures on petitions that are not covered by § 23-17-57(4) may be within 150 feet of the entrance of a polling place but not within 30 feet of any room in which an election is being held; however, it is the duty of the election bailiff to insure that anyone collecting signatures does not, in any manner, impede the progress of voters coming into a polling place to vote. 2002 Miss. Op. Att'y Gen. 28.

## § 23-17-59. Unlawful to interfere with or influence vote of elector.

It is unlawful for a person to interfere with or influence the vote of an elector on a measure by means of violence, threats, intimidation, enforcing the payment of a debt, bringing a suit or criminal prosecution, any threat or action affecting a person's conditions of employment or other corrupt means.

**HISTORY:**

Laws, 1993, ch. 514, § 30, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

**Editor's Notes —**

On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

**Cross References —**

Definitions applicable to this section, see § 23-17-47.

Penalties for violations of this section, see § 23-17-61.

## § 23-17-60. Removal of name from initiative petition due to fraud or coercion.

Any person who alleges that his or her signature on an initiative petition was obtained as the result of fraud or coercion, or that the person was intentionally misled as to the substance or effect of the petition, may have his or her signature removed from the initiative petition upon filing an affidavit to such effect with the Secretary of State anytime before the Secretary of State has accepted and filed the petition under Section 23-17-23.

**HISTORY:**

Laws, 1996, ch. 444, § 5, eff from and after June 28, 1996 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the amendment of this section).

**Editor's Notes —**

On June 28, 1996 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the addition of this section by Laws of 1996, ch. 444.

## § 23-17-61. Penalties for violating §§ 23-17-49 through 23-17-59.

Any violation of Sections 23-17-49 through 23-17-59 is punishable by imprisonment in the county jail for not more than one (1) year, or by a fine not to exceed One Thousand Dollars ($1,000.00), or by both such fine and imprisonment.

**HISTORY:**

Laws, 1993, ch. 514, § 31, eff from and after August 3, 1993 (the date the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section).

**Editor's Notes —**

On August 3, 1993 the United States Attorney General interposed no objections under Section 5 of the Voting Rights Act of 1965, to the creation of this section by Laws of 1993, ch. 514.

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    Marking ballot, §23-15-721.
      Attesting witness, §23-15-631.
    Permanently disabled.
      Application.
        Statement by physician or nurse practitioner, requirement, §23-15-629.
      Automatic receipt of ballots without reapplication, §23-15-629.
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      Time for sending ballots prior to election, §23-15-629.
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    Form, §23-15-635.
  Electors out of country or away from residence on election day.
    Marking ballot, §23-15-721.
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  Electronic voting systems.
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**Absentee ballots** —Cont'd
  Employment or work required on election day.
    Electors qualified to vote absentee, §23-15-713.
  Examination and counting, §23-15-639.
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      Grounds, §23-15-641.
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    Affidavit printed on back of envelope, §23-15-719.
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      Certificate of person assisting, form, §§23-15-635, 23-15-719.
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    Marking ballots, §23-15-631.
    Military and overseas voters.
      Sending with ballot and other materials, §23-15-691.
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    Duty to furnish managers, §23-15-625.
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**Absentee ballots** —Cont'd
  Marking ballots —Cont'd
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**Absentee ballots** —Cont'd
  Military and overseas voters —Cont'd
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      Transmission by mail, fax or e-mail, §23-15-699.
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**Absentee ballots** —Cont'd
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    List of persons in precincts voting absentee.
      Duty to furnish managers, §23-15-625.
    List of persons preparing ballots.
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**Absentee ballots** —Cont'd
  Registrars —Cont'd
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**Affidavits** —Cont'd
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**Auditor of public accounts.**
  Candidate entering race for party nomination.
    Candidate's name, address, party affiliation.
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**Ballots** —Cont'd
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  Paper ballots.
    Direct recording electronic voting equipment (DRE).
      Emergency paper ballots.
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**Ballots** —Cont'd
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**Ballots** —Cont'd
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      Municipal office candidates, §23-15-361.
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**Ballots** —Cont'd
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**Campaign finance disclosure** —Cont'd

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  Supreme court and court of appeals judges, §23-15-607.
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